



GOVERNMENT OF INDIA

# Chandigarh Administration Gazette

Published by Authority

NO. 055] CHANDIGARH, MONDAY, APRIL 01, 2024 ( CHAITRA 12, 1946 SAKA)

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

## Notification

Dated, Chandigarh, the 18th March 2024

**No. 13/2/87-HII(2)-2024/4478.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **54/2022** dated **11.01.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PAVITERBIR SINGH S/O SHRI RASHPAL SINGH, R/O VILLAGE GANDIWIND DHATTAL, TEHSIL PATTI, DISTRICT TARN TARAN, (AADHAAR NO.6231 1029 6871) MOBILE NO. 9855997788. (Workman)

AND

PUNJAB STATE GRAINS PROCUREMENT CORPORATION LTD., ANAJ BHAWAN, SECTOR 39-C, CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

## AWARD

1. Paviterbir Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the claimant-workman received Memo No.G.M.(2012-13)-12/90 dated 26.04.2012 from the Punjab State Grains Procurement Corporation Ltd. (*here-in-after in short called 'PUNGRAIN'*), Chandigarh for appearing in interview for the post of Assistant / Data / Tally Operator on 04.05.2012. Claimant-workman was selected & appointed on contractual basis and he was assigned the designation of Financial Assistant vide G.M.(F)PUNGRAIN-12/748 dated 29.05.2012. The claimant-workman joined the service of PUNGRAIN on 29.05.2012 on contract basis as Financial Assistant. Services of the claimant-workman were regularised by the Corporation vide Memo No. G.M. (Accounts) CB4-2016/4748 dated 29.12.2016. The claimant-workman performed his duties to the entire satisfaction of his superiors. Order of regularisation was withdrawn without giving him any opportunity of hearing. Thereafter, the claimant-workman was transferred to Gurdaspur. While working at Gurdaspur, the claimant-workman was declared COVID-19 positive. He was allowed 17 days quarantine leave from 01.05.2021 to 18.05.2021. As the claimant-workman was not keeping well after he suffered from COVID-19 he was advised 5 days rest by CHC, Sarhali (Tarn Taran)vide OPD/CR No.10417 dated 15.06.2021. The District Controller, Food & Civil Supplies and Consumer Affairs, Amritsar wrote to the Director, Food, Civil Supplies and Consumer Affairs, Punjab, Chandigarh on 18.06.2021 stating that claimant-workman joined at Gurdaspur

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on 24.05.2021 and he remained at Gurdaspur only for 11 days. At Gurdaspur there is heavy load of work, therefore, claimant-workman should be transferred to Pathankot and Pawan Kumar should be posted in his place so that work of the Circle Office does not suffer. Another letter was written on 01.07.2021 by District Controller Food & Civil Supplies and Consumer Affairs, Amritsar to the Director Food & Civil Supplies and Consumer Affairs, Punjab, Chandigarh that the claimant-workman along with one Paramjit Singh should be retained at Amritsar for early disposal of work and clearance of pendency of previous years. The claimant-workman was called to the Circle Office on 21.07.2021 and due to ill-health he sought leave for 21.07.2021 and permission to leave the station on 21.07.2021 and 22.07.2021. He was advised rest for 5 days vide OPD / CR No.11941 dated 22.07.2021 as the claimant-workman met with an accident. Thereafter, the claimant-workman applied for leave on medical grounds from 22.07.2021 to 26.07.2021 through e-mail. Leave applied by the claimant-workman was rejected. The claimant-workman took treatment from Civil Hospital, Patti vide OPD No.3214 dated 27.07.2021 and he was advised 7 days rest. As due to ill-health the claimant-workman was not in a position to attend his duties, District Controller, Food & Civil Supplies and Consumer Affairs, Gurdaspur wrote another letter to Director Food & Civil Supplies and Consumer Affairs, Punjab, Chandigarh on 22.07.2021 to transfer Pawan Kumar to Gurdaspur and the claimant-workman to Pathankot. Instead of directing the claimant-workman to appear before Civil Surgeon, Tarn Taran or Amritsar, he was directed to appear before Civil Surgeon, Gurdaspur vide letter dated 23.07.2021. When the claimant-workman was able to travel, he appeared before the Civil Surgeon, Gurdaspur on 18.08.2021 and he was referred back to CHC, Sarhali. The report was required to be sent by Civil Surgeon to District Manager, PUNGRAIN, Gurdaspur but the claimant-workman was not aware as to whether any report was sent or not. However, it is reiterated that leave applied by the claimant-workman was never rejected. The claimant-workman was directed to appear in the Head Office of the corporation at Chandigarh for the purpose of preparing the balance sheet for the year 2019-20 and the claimant-workman attended the Head Office. The claimant-workman was again directed to appear in the PUNGRAIN Head Office of the corporation on 28.08.2021 for provisional balance sheet for the year 2020-21. A show-cause notice was issued to the claimant-workman by the management in file No. DFS-PG0PG04/2/2021-PUNGRAIN/1/226253 dated 10.08.2021. The claimant-workman sent a reply to the show-cause notice on 16.08.2021. However, the services of the claimant-workman have been terminated vide order dated 06.09.2021 bearing endorsement No.P.G-1-2021/435 dated 09.09.2021. The claimant-workman has rendered more than 9 years continuous service. His services have been terminated without issuing any charge sheet and holding any inquiry or payment of retrenchment compensation as envisaged under Section 25F of the ID Act. Since the termination of services of the workman is illegal and cannot be sustained in the eyes of law, the workman issued a demand notice under Section 2A of the ID Act to the Labour-cum-Conciliation Officer. However, the conciliation failed. Therefore, Conciliation Officer vide Memo No.1564 dated 06.07.2022 advised the claimant-workman to file an application direct before the Labour Court as the conciliation proceedings at his level has been closed. Hence, this claim petition. The claimant-workman is un-employed and he has not been able to find out any job. In fact, he has become over-age by now. Therefore, the workman is liable to reinstated with continuity of service along with full back wages. Prayer is made that order of termination may be declared null and void and the claimant may be ordered to be reinstated with continuity of service and full back wages or any other relief which this Hon'ble Tribunal may deem fit under the circumstances of the case may be granted.

3. On notice, management contested the claim statement by filing written reply on 27.01.2023 wherein preliminary objection are taken on the ground that claim petition is not maintainable in the present form as the appointment of the workman was purely on contractual basis and he could be terminated at any time without any notice during the period. However, the respondent-management has adopted due procedure of law before dispensing the contract services of the workman through order dated 06.09.2021 issued vide letter No.P.G.-1/2021/435(934424/2021/PUNG001) dated 09.09.2021. The said order passed by the respondent-management is well reasoned, self-explanatory and passed after due deliberation of claimant's reply to show-cause notice, his submission on personal hearing and comments on reply to show-cause notice given by the controlling authority i.e. District Manager, PUNGRAIN, Gurdaspur. Hence, there was no contravention of principle of natural justice and any provision of the ID Act. The reply to claim petition is being filed by Sweety Devgan - Deputy Director, PUNGRAIN as powers have been delegated in this regard. The



workman was appointed on contractual basis vide appointment letter No.GM(F)Pungrain-12/748 dated 29.05.2012 and his services could be terminated at any time without notice during the period. Clause 'a' of the appointment letter stipulates that appointment is purely on contractual basis for one year and this contract can be terminated at any time without any notice during the period. His contract was extended from time to time. Despite this fact his services can be terminated in accordance with the Clause 'a' of the appointment letter, office / management served one month's notice upon the claimant before dispensing with his contractual service vide notice dated 10.08.2021 and he was asked to submit his reply to the notice within 7 days as stipulated under Section 25F of the ID Act. However, the claimant was granted an opportunity of hearing by following the principle of natural justice. Since the workman was served one month notice and reply was sought thereon and personal hearing was granted to him before dispensing with his contractual service vide order dated 06.09.2021 bearing Endorsement No.P.G.-1/2021/435(934424/2021/PUNG001) dated 09.09.2021, therefore, there is no illegality and impropriety in termination order dated 06.09.2021 / 09.09.2021. The claimant had made himself bound by terms & conditions of the appointment letter as he accepted the same. The claimant has bound himself inter alia by Clause 2(a) of appointment letter that he could be terminated at any time without any notice during the period. As such, the claimant cannot be allowed to take plea that his services have been terminated without issuing any charge sheet and holding any inquiry or payment of retrenchment compensation as envisaged under Section 25F of the ID Act. Furthermore, the claimant cannot be allowed to re-tracked from his act & conduct of acceptance of terms & conditions of the appointment letter. The claim petition is liable to be dismissed on the ground of law of estoppel. The act & conduct of the claimant himself disentitle him to the relief sought in the present claim petition as the claimant was negligent and careless and he showed dereliction in his duties and paid no obedience to the order of his superiors. Therefore, the termination order is just, reasonable and legal. The petition is bad for non-joinder of necessary parties and claimant has not impleaded his controlling authority i.e. District Manager, PUNGRAIN, Gurdaspur as necessary party. The claimant has not approached the Hon'ble Tribunal with clean hands and concealed and suppressed the material facts from this Hon'ble Tribunal. The claimant had not disclosed in his petition that he and his wife submitted written requests for reinstatement after dispensing of services vide termination order under challenge. The claimant's wife made written request vide diary No.PA/DFS7037 dated 21.09.2021 that soft treatment be adopted in favour of her husband. The claimant in his written request vide diary No.PA/DFS/7805 dated 22.10.2021 admitted his mistake and prayed for his reinstatement. Even in the above said letter, the wife of the workman has not mentioned anything with regard to the road accident of the workman. The claimant has not disclosed these facts to this Hon'ble Court and has concealed the same. Before filing the present claim petition, the claimant is bound by his statement made in his request letter vide diary No.PA/DFS/7805 dated 22.10.2021 wherein he has admitted his mistakes. It is settled law that a person cannot re-tracked from his earlier statement. In view of the previous statement of the claimant made in the request letter, the present claim petition is liable to be dismissed. Since the claimant's appointment was purely on contractual basis and he could be terminated at any time without notice during the period, so the claimant cannot invoke the jurisdiction of Industrial Tribunal Act.

4. Further on merits, it is stated that it is a matter of record that the claimant-workman received Memo No.G.M.(2012-13)-12/90 dated 26.04.2012 from the PUNGRAIN, Chandigarh for appearing in interview for the post of Assistant / Data / Tally Operator on 04.05.2012. Claimant-workman was selected & appointed on contractual basis and he was assigned the designation of Financial Assistant vide G.M.(F)PUNGRAIN-12/748 dated 29.05.2012. It is further admitted to the extent that the claimant was appointed on contractual basis vide appointment letter dated 29.05.2012. It is further submitted that the letter of appointment contains various stipulations which were accepted by the claimant. By accepting the said appointment letter, claimant cannot be allowed to re-track from the terms & conditions. Clause 2(a) of terms & conditions of appointment letter stipulates that the appointment is purely on contractual basis for one year and this contract can be terminated at any time without any notice during the period. Despite the fact that the claimant's services can be terminated in accordance with the Clause 2(a) of appointment letter, however, the management served one month's notice upon the claimant vide notice dated 10.08.2021 and he was asked to submit his reply to the same within 7 days as stipulated under Section 25F of the ID Act. So, there was no violation of principles of natural justice. It is specifically denied that the claimant performed his duties to the entire satisfaction of his superiors. Rather

claimant has been negligent and careless in his performance of official duty and showed dereliction of duty. The claimant used to disobey the orders of his superior. As far as withdrawing the order of regularisation is concerned, it is submitted that the contractual service of the claimant was regularised on 29.12.2016 with other 52 workmen but said order was withdrawn and the claimant and other 52 workmen were reverted back to contract basis on 22.10.2020 as the Accountant General, Punjab and Advocate General Punjab raised objection regarding their regularisation. The claimant along with other workmen have filed various Civil Writ Petitions against the order of the reversion before the Hon'ble High Court which were clubbed together and the Hon'ble Court granted stay order in CWP No.21206 of 2020 and sought reasons with regard to the reversion order. In compliance of order passed by the Hon'ble Court the management passed speaking order vide Endorsement No.P.G.-1(138)-2021/30 dated 17.02.2021 while clarifying the correct situation. However, before passing speaking order dated 17.02.2021, workmen were given personal hearing. Furthermore, the claimant filed various writ petitions and civil miscellaneous application for grant of stay against the speaking order dated 17.02.2021 but no stay was granted by the Hon'ble Court and the services of the claimant including other workman are still on contractual basis. The claimant was in continuing service on contractual basis on the day of initiating disciplinary proceedings against him. While passing the reversion order on 22.10.2020, the services of the claimant along with other workmen were fixed till 31.03.2021 i.e. date of contract. The contract was further extended in the decision of the Civil Writ Petition or 31.03.2021, whichever is earlier in accordance with decision taken in meeting of Board of Directors. It is settled law that litigant must approach the Hon'ble Court with clean hands and do not conceal any material facts from the Court. However, the claimant did not disclose that one litigation between him and management is pending. Furthermore, the claimant did not disclose order of withdrawal of regularisation of his services with the present petition. It is a matter of record that the workman was allowed 7 days quarantine leave from 01.05.2021 to 17.05.2021 as he was declared COVID-19 positive. It is further a matter of record that the claimant was advised 5 days rests by CHC, Sirhali, Tarn Taran vide OPD / CR No.10417 dated 15.06.2021. The claimant may be put to strict proof of evidence. The claimant had not disclosed any document to prove that he was declared COVID-19 positive. The claimant did not disclose the true facts before this Hon'ble Tribunal. The claimant did not disclose that the District Controller, Gurdaspur wrote a letter dated 18.06.2021 to the Director, Food & Civil Supply and Consumer Affairs, Punjab with regard to un-authorised leave taken by the claimant in which it was mentioned that leave being sent through email was not proved by the competent authority. It was also written that due to absence of workman, the office work got affected. After joining Gurdaspur on 24.05.2021 the claimant remained absent willfully for 11 days and used to send his leave through email which was not approved by the competent authority. The workman is habitual of taking leaves without approval due to which day-to-day work of the office got affected. It is admitted that letter dated 01.07.2021 was written by District Controller, Food & Civil Supplies and Consumer Affairs, Amritsar to the Director, Food & Civil Supplies and Consumer Affairs, Punjab. The claimant has not presented true picture and concealed material facts. The claimant sought grant of leave through email on 21.07.2021 but District Manager while rejecting his leave through email dated 21.07.2021 directed him to contact DFSC. The claimant instead of contacting DFSC-cum-DM, PUNGRAIN, Gurdaspur again sent medical leave for 22.07.2021 to 26.07.2021 through email dated 22.07.2022. DM, PUNGRAIN, Gurdaspur tried to contact claimant on his mobile but he did not receive phone call and later on switched off his mobile. A letter was written by the Managing Director, PUNGRAIN, Chandigarh to District Manager, PUNGRAIN, Gurdaspur vide letter No.P.G.No.1(151)2021314 dated 23.07.2021 for sending his attendance sheet through email while endorsing the same to the claimant vide endorsement letter P.G.No.1(151)2021325 dated 23.07.2021 to get his medical check-up from Civil Surgeon, Gurdaspur within a week and send certificate thereof to corporation so that further proceedings qua medical leave may be adopted. But the claimant never produced his medical certificate to corporation. The claimant was directed by the Head Office, Chandigarh vide letter dated 23.07.2021 to get his medical examination within seven days. Even office of District Manager, Gurdaspur also wrote on 26.07.2021 to get his medical examination but claimant did not get his medical check-up from Civil Surgeon, Gurdaspur. Claimant admitted in his reply that DM, PUNGRAIN vide letter dated 26.07.2021 has directed him to get his medical check-up from Civil Surgeon, Gurdaspur. The claimant in his reply to show-cause notice stated that the Civil Surgeon, Gurdaspur informed him on his visit on 04.08.2021 that no letter was received from Circle Office Gurdaspur. No letter was written by the claimant with regard to the said fact that Civil Surgeon, Gurdaspur has denied examining him on the

aspect that no letter has been received from the department for his medical examination. The plea taken by the claimant that no letter was received from Circle Office, Gurdaspur is not tenable as office of MD, PUNGRAIN had already written a letter to Civil Surgeon, Gurdaspur on 23.07.2021. The claimant had never informed the office about non-receipt of letter in the Civil Surgeon Office. Office of MD, PUNGRAIN, Chandigarh asked the claimant to get his medical check-up from Civil Surgeon, Gurdaspur within week and send certificate thereof to corporation so that further proceedings qua medical leave be adopted. But the claimant never produced his medical certificate to the corporation. The claimant appeared in the Head Office of PUNGRAIN, Chandigarh on 05.08.2021 for the purpose of balance sheet but the work of balance sheet was not done by him, rather the work of balance sheet was done by Shri Pawan Kumar - Financial Assistant, Pathankot as Shri Pawan Kumar - Financial Assistant was attending office since 02.08.2021 and he was performing his duties at District Gurdaspur. The claimant has not performed his work at District Gurdaspur and office of DM informed him time and again that due to his absence, office work was getting affected. It is a matter of record that show-cause notice was issued to the claimant by the management in File No. DFS-PG0PG04/2/2021-PUNGRAIN/1/226253 dated 10.08.2021. It is admitted that claimant filed a reply to show cause notice on 16.08.2021 and services of the workman were terminated vide order dated 06.09.2021 / Endorsement dated 09.09.2021. It is specifically denied that the workman has rendered more than 9 years continuous service. The contract with the claimant was extended from time to time. It is admitted that the demand notice was issued and conciliation failed between the parties. It is denied for want of knowledge that the claimant is un-employed and has not been able to find out any job. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied being wrong, false and incorrect and prayer is made that the claim petition may be dismissed being devoid of merits.

5. The claimant filed replication, wherein contents of the written reply except admitted facts are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 24.02.2023 :-

1. Whether the termination order of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service and full back wages, as prayed for ? OPW
3. Whether the claim application is not maintainable in the present form ? OPM
4. Whether the statement of claim is bad for non-joinder of necessary party ? OPM
5. Whether the claimant has not approached the Tribunal with clean hands and concealed the material facts ? OPM
6. Whether the claimant by his own act & conduct is estopped from claiming the relief ? OPM
7. Relief.

7. In evidence, the workman Paviterbir Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to 'W17'.

**Exhibit 'W1'** is copy of appointment order dated 29.05.2012 issued to Paviterbir Singh.

**Exhibit 'W2'** is copy of order of regularisation dated 29.12.2016.

**Exhibit 'W3'** is copy of quarantine leave approved by Head Office dated 05.06.2021 bearing endorsement dated 08.06.2021

**Exhibit 'W4'** is copy of OPD slip dated 15.06.2021 of CHC, Sarhali, Tarn Taran.

**Exhibit 'W5'** is copy of letter dated 18.06.2021 issued by The District Controller, Food & Civil Supplies and Consumer Affairs, Amritsar to Director, Food, Civil Supplies and Consumer Affairs, Punjab, Chandigarh.

**Exhibit 'W6'** is copy of letter dated 01.07.2021 issued by The District Controller, Food & Civil Supplies and Consumer Affairs, Amritsar to Director, Food, Civil Supplies and Consumer Affairs, Punjab, Chandigarh.

**Exhibit 'W7'** is copy of email dated 22.07.2021 sent by Paviterbir Singh to the District Food Supply Controller, Gurdaspur.



**Exhibit 'W8'** is copy of OPD slip dated 22.07.2021 of CHC, Sarhali, Tarn Taran.

**Exhibit 'W9'** is copy of OPD slip dated 27.07.2021 of Civil Hospital, Patti, Tarn Taran.

**Exhibit 'W10'** is copy of letter dated 22.07.2021 issued by The District Controller, Food & Civil Supplies and Consumer Affairs, Gurdaspur to Director, Food, Civil Supplies and Consumer Affairs, Punjab, Chandigarh.

**Exhibit 'W11'** is copy of OPD slip dated 18.08.2021 of Civil Hospital, Gurdaspur.

**Exhibit 'W12'** is copy of attendance certificate issued by ACFA, PUNGRAIN, Chandigarh for attending meeting in PUNGRAIN Head Office on 05.08.2021.

**Exhibit 'W13'** is copy of attendance certificate issued by ACFA, PUNGRAIN, Chandigarh for attending meeting in PUNGRAIN Head Office on 28.08.2021

**Exhibit 'W14'** is copy of show cause notice dated 10.08.2021 issued by the Managing Director, PUNGRAIN, Chandigarh to Paviterbir Singh.

**Exhibit 'W15'** is copy of reply dated 16.08.2021 by the workman Paviterbir Singh to show-cause notice dated 10.08.2021.

**Exhibit 'W16'** is copy of termination order of Pativerbir Singh dated 06.09.2021 bearing endorsement dated 09.09.2021 issued by the Managing Director, PUNGRAIN, Chandigarh.

**Exhibit 'W17'** is copy of Memo No.1564 dated 06.07.2022 whereby conciliation proceedings were closed by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh.

8. On 14.07.2023 the workman closed his evidence in affirmative.

9. On the other hand, management examined MW1 Ms. Navneet Kaur - Food Supply Officer, Sub-division, Gurdaspur, Punjab, who tendered his affidavit Exhibit 'MW1/A' along with attested copies of documents Exhibit 'M6' to 'M20'. Documents Exhibit 'M1' to 'M5' are put by the management to AW1 Paviterbir Singh in his cross-examination.

**Exhibit 'M1'** is copy of office order dated 22.10.2020 of Managing Director, PUNGRAIN.

**Exhibit 'M2'** is copy of order dated 16.02.2021 / endorsement dated 17.02.2021 of Managing Director, PUNGRAIN, Head Office Chandigarh.

**Exhibit 'M3'** is copy of e-mail whereby the leave for dated 21.07.2021 sought by the claimant-workman was declined.

**Exhibit 'M4'** is copy of reply dated 16.01.2021 to show-cause notice.

**Exhibit 'M5'** is copy of letter dated 21.09.2021 addressed from Jatinder Kaur, W/o Paviterbir Singh to Managing Director, PUNGRAIN, Punjab relating to the subject of termination of services of Paviterbir Singh.

**Exhibit 'M6'** is appointment letter dated 29.05.2012 vide Exhibit M-6.

**Exhibit 'M7'** is show cause notice dated 10.08.2021.

**Exhibit 'M8'** is reversion order dated 22.10.2020.

**Exhibit 'M9'** is order dated 17.02.2021.

**Exhibit 'M10'** is letter dated 31.03.2021 issued from Managing Director, PUNGRAIN to all the employees against whom reversion order was passed.

**Exhibit 'M11'** is joining report dated 24.05.2021 at Circle office Gurdaspur.

**Exhibit 'M12'** is letter dated 18.06.2021 issued from District Controller, Gurdaspur to Director Food & Civil Supplies, Chandigarh regarding un-authorised leave taken by the workman.

**Exhibit 'M13'** is hardcopy of e-mail dated 22.07.2021 sent by the workman seeking leave along with certificate dated nil under Section 65-B of Indian Evidence Act vide Exhibit 'M13/1'.

**Exhibit 'M14' & Exhibit 'M15'** is letter dated 23.07.2021 by District Manager, PUNGRAIN, Gurdaspur, addressed to the claimant and Civil Surgeon, District Gurdaspur, regarding un-authorised leave taken by the workman.

**Exhibit 'M16'** is letter dated 26.07.2021 written by District Collector, Food Civil Supplies & Consumer Affairs, Gurdaspur addressed to claimant to get his medical check-up from Civil Surgeon.

**Exhibit 'M17'** is letter dated 23.07.2021 written by District Collector, Food Civil Supplies & Consumer Affairs, Gurdaspur addressed to the Director Food Supply, Chandigarh for taking Administrative action against the claimant.

**Exhibit 'M18'** is show-cause notice dated 10.08.2021.

**Exhibit 'M19'** is termination order dated 06.09.2021 endorsement No. PG-1/2021/435(934424/2021/PUNG001) dated 09.09.2021.

**Exhibit 'M20'** is letter dated nil written by claimant to Managing Director, PUNGRAIN seeking reinstatement on compassionate grounds.

10. On 20.11.2023 Learned Representative for the management closed oral evidence. On 03.01.2024 Learned Representative for the management closed documentary evidence.

11. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

**Issues No. 1 & 2 :**

12. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

13. Onus to prove both these issues is on the workman.

14. Learned Representative for the workman referred testimony of AW1 Paviterbir Singh, who vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W17'.

15. On the other hand, Learned Representative for the management referred the testimony of MW1 Ms. Navneet Kaur - Food Supply Officer, Sub-division Gurdaspur, Punjab, who vide her affidavit Exhibit 'MW1/A' deposed the material contents of the written statement, which are not reproduced in order to avoid repetition. Learned Representative for the management referred documents Exhibit 'M1' to Exhibit 'M20'.

16. From the oral as well documentary evidence led by the parties, it comes out that the parties have no dispute with regard to the facts that claimant-workman was selected & appointed on contractual basis vide appointment letter Exhibit 'W1' and he was assigned the designation of Financial Assistant vide G.M.(F)PUNGRAIN-12/748 dated 29.05.2012. The claimant-workman joined the service of PUNGRAIN on 29.05.2012 on contract basis as Financial Assistant. Services of the claimant-workman were regularised by the Corporation vide Memo No.G.M.(Accounts)CB4-2016/4748 dated 29.12.2016 / Exhibit 'W2'. Later on, the regularisation order was withdrawn. The workman challenged the withdrawal order and the matter is pending before the Hon'ble High Court. Further the fact remained undisputed that the workman was allowed 17 days quarantine leave from 01.05.2021 to 17.05.2021 as he was found COVID-19 positive. The letter dated 18.06.2021 / Exhibit 'W5' and letter dated 01.07.2021 / Exhibit 'W6' are also not disputed.

17. The workman applied leave through e-mail on 21.07.2021 which was rejected through e-mail dated 21.07.2021. The workman again sent medical leave for 22.07.2021 to 26.07.2021. The workman has alleged that he was advised rest for five days vide medical slip Exhibit 'W8' as he met with an accident. The leave applied by him on 21.07.2021 and 22.07.2021 was never rejected. On the other hand, the management has alleged that the workman sent leave dated 21.07.2021 through e-mail dated 21.07.2021 and medical leave

for 22.07.2021 to 26.07.2021 through e-mail dated 22.07.2021. Upon which DM, PUNGRAIN, Gurdaspur tried to contact the workman on his mobile but the workman did not receive the phone call and later on switched off his mobile. The workman alleged that he remained under medical treatment from Civil Hospital, Patti vide OPD slip dated 27.07.2021 / Exhibit 'W9'. The workman alleged that due to ill-health he was not in a position to attend his duties, thus District Controller Food & Civil Supplies and Consumer Affairs, Gurdaspur wrote a letter on 22.07.2021 / Exhibit 'W10' to Director Food & Civil Supplies and Consumer Affairs, Punjab Chandigarh seeking to transfer Pawn Kumar to Gurdaspur and the workman to Pathankot. The management further directed the workman vide letter dated 23.07.2021 to appear before Civil Surgeon, Gurdaspur for medical check-up. The management has alleged that despite directions from the Head Office the workman did not get his medical check-up conducted from Civil Surgeon, Gurdaspur. On the other hand, the workman alleged that when he was able to travel, he appeared before the Civil Surgeon, Gurdaspur on 18.08.2021 and he was referred back to CHC, Sarhali. AW1 Paviterbir Singh / workman when put to cross-examination stated that on 18.08.2021, also he went to Civil Hospital, Gurdaspur. AW1 admitted as correct that at Civil Hospital, Gurdaspur his medical examination was not conducted for want of record and he was referred back to Community Health Centre, Sarhali for comments.

18. Admittedly, the workman re-joined duty on 02.08.2021 at Gurdaspur. The workman was issued show-cause notice dated 10.08.2021 / Exhibit 'M7' to which workman filed reply dated 16.08.2021 / Exhibit 'W15'. In this regard AW1 / Paviterbir Singh in his cross-examination stated that he was issued show-cause notice dated 10.08.2021 by the Department to which he filed reply dated 16.08.2021. The services of the workman were terminated vide order of termination dated 06.09.2021 / endorsement dated 09.09.2021 / Exhibit 'W16'. AW1 in his cross-examination admitted as correct that before termination of his services the management has conducted disciplinary proceedings against him. He was given personal hearing through virtual mode i.e. video conferencing during the disciplinary proceedings.

19. The workman has alleged that he was called to the Circle Office on 21.07.2021 and due to ill-health, he sought leave for 21.07.2021 and permission to leave the station on 21.07.2021 and 22.07.2021 and the workman was advised rest for 5 days vide OPD / CR No.11941 dated 22.07.2021 as the claimant-workman met with an accident. Thereafter, the claimant-workman applied for leave on medical grounds from 22.07.2021 to 26.07.2021 through e-mail. Leave applied by the claimant-workman was rejected. The claimant-workman took treatment from Civil Hospital, Patti vide OPD No.3214 dated 27.07.2021 and he was advised 7 days' rest. As due to ill-health, the claimant-workman was not in a position to attend his duties District Controller, Food & Civil Supplies and Consumer Affairs, Gurdaspur wrote another letter to Director Food & Civil Supplies and Consumer Affairs, Punjab, Chandigarh on 22.07.2021 to transfer Pawan Kumar to Gurdaspur and the claimant-workman to Pathankot. Instead of directing the claimant-workman to appear before Civil Surgeon, Tarn Taran or Amritsar, he was directed to appear before Civil Surgeon, Gurdaspur vide letter dated 23.07.2021. When the claimant-workman was able to travel, he appeared before the Civil Surgeon, Gurdaspur on 18.08.2021 and he was referred back to CHC, Sirhali. The report was required to be sent by Civil Surgeon to District Manager, PUNGRAIN, Gurdaspur but the claimant-workman was not aware as to whether any report was sent or not. However, it is reiterated that leave applied by the claimant-workman was never rejected. The claimant-workman was directed to appear in the Head Office of the corporation at Chandigarh for the purpose of preparing the balance sheet for the year 2019-20 and the claimant-workman attended the Head Office. The claimant-workman was again directed to appear in the PUNGRAIN Head Office of the corporation on 28.08.2021 for provisional balance sheet for the year 2020-21. A show-cause notice was issued to the claimant-workman by the management in file No.DFS-PG0PG04/2/2021-PUNGRAIN/1/226253 dated 10.08.2021. The claimant-workman sent a reply to the show cause notice on 16.08.2021. However, the services of the claimant-workman have been terminated vide order dated 06.09.2021 bearing endorsement No.P.G-1-2021/435 dated 09.09.2021. The claimant-workman has rendered more than 9 years continuous service. MW1 Navneet Kaur in her cross-examination admitted as correct that the workman was appointed in the year 2012 and his services were terminated in the year 2021. MW1 admitted as correct that the workman continuously remained working from year 2012 to 2021.



20. Learned Representative for the workman argued that undisputedly the workman has completed more than 240 days of continuous service in 12 calendar months preceding the date of termination (services being terminated vide order dated 06.09.2021 / endorsement dated 09.09.2021, w.e.f. 09.09.2021). Since the workman has rendered continuous service for about 9 years as provided under Section 25B of the ID Act, therefore, the workman can be subjected to retrenchment only through the procedure mentioned in Section 25F of the ID Act. In the present case, the management before terminating the services of the workman neither issued charge sheet, nor conducted domestic inquiry nor paid retrenchment compensation, thus violated Section 25F of the ID Act. To support his argument Learned Representative for the workman referred cross-examination of MW1 wherein she has stated that no charge sheet was issued to the workman before termination of his services. No domestic inquiry was held before terminating the services of the workman. MW1 voluntarily stated that notice was given. MW1 further stated that no retrenchment compensation was paid to the workman. No junior to the workman was removed from service while terminating the services of the workman. MW1 denied the suggestion as wrong that management did not follow Section 25F of the ID Act before termination of the services of the workman. Learned Representative for the workman further argued that it is not a case of non-renewal of contract or completion of any specific project which will be covered by Clause (bb) of Section 2(o) of the ID Act. The plea of automatic termination on expiry of fixed period of appointment cannot be sustained unless it is proved by producing relevant record that the workman was appointed for doing a specific job and his services came to end on completion of that job. In the present case, initially the workman was appointed on the basis of appointment letter dated 29.05.2012 on contractual basis vide Exhibit 'W1' and the contract was renewed from time to time. In support of his argument Learned Representative for the workman referred the judgment of Hon'ble Supreme Court of India reported in **2014(11) SCC 85** titled as **Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited**. The relevant portion of the judgment is reproduced as below :-

*"Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, 2010(3) S.C.T. 319 : 2010(5) SCC 497 as under :-*

*13.... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 Supreme Court 610, Bombay Union of Journalists v. State of Bombay, (1964) 6 SCR 22, State Bank of India v. N. Sundara Money, (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala, (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 255, L. Robert D'Souza v. Executive Engineer, Southern Railway, (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, (1980) 4 SCC 443, Gammon India Ltd. V. Niranjan Das, (1984) 1 SCC 509, Gurmail Singh v. State of Punjab, 1991(3) S.C.T. 608 : (1991) 1 SCC 189 and Pramod Jha v. State of Bihar, 2003(2) S.C.T. 296 : (2003) 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof*

*and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his services was not terminated."*

21. Learned Representative for the workman also referred **2010(2) SCC 543** titled as **Ramesh Kumar Versus State of Haryana; 1998(2) SCT 72 P&H(DB)** titled as **Simla Devi Versus Presiding Officer, Labour Court, Bathinda and 1989 SCC (L&S) 565 SC** titled as **Narotam Chopra Versus Presiding Officer, Labour Court & Others.**

22. On the other hand, it is argued by Learned Representative for the management has argued that the claimant-workman was aware of the fact that his appointment was purely contractual and that could be terminated without notice or compensation or on completion of stipulated period. Therefore, the case of termination of services of the workman does not become an 'industrial dispute'. To support his arguments Learned Representative for the management referred the judgment of Hon'ble Supreme Court of India reported in **2007(1) SCT 614** titled as **M.D., Karnataka Handloom Dev. Corpn. Ltd. Versus Mahadeva Laxman Raval.** To my opinion, the ratio of the ruling referred supra by Learned Representative for the management is not applicable to the facts of the present case because the management has failed to produce any material evidence on record to show that the workman was employed for any particular project and his services came to an end on the completion of that project or that his services were to be terminated automatically on expiry of fixed period of appointment. The judgment reported 1998(2) SCT 72 P&H (DB)(supra) referred by Learned Representative for workman is applicable to the facts of the present case to an extent.

23. As far as termination of services of the workman without compliance of Section 25F of the ID Act is concerned, Learned Representative for the management argued that the employer cannot be compelled to retain in service a contractual employee though not satisfied with his work & conduct. In the present case, the workman is admittedly served a show-cause notice to which he filed written reply, the workman was given opportunity of personal hearing and then the order of termination of his services was passed. In view of the aforesaid, the workman cannot complaint that he has been condemned unheard. To support his arguments Learned Representative for the management referred the judgment reported in **2022(4) SCT 378 (P&H)** titled as **Mandeep Versus State of Haryana & Others.** Learned Representative for the management made submission that arguments referred in para 5 has been dealt with in para 7 of the judgment. The relevant para 5 & 7 of judgment is reproduced as below :-

*"5. The arguments advanced by learned Senior counsel for the petitioner are that a regular inquiry in the matter should have been conducted since there were allegations against the petitioner, which were stigmatic in nature; the respondents having neither conducted any regular inquiry nor allowing the petitioner to join probe conducted by respondent No.3, the impugned order cannot stand and is liable to be set aside and petitioner be directed to be taken in service. In support of his contentions, learned counsel for the petitioner has referred to judgment i.e. **Pramod Kumar Sharma v. State of Haryana and others, 2017 (1) SCT 79, Mohit v. State of Haryana and others by this Court in CWP No.14647 of 2019 decided on 27.9.2019.***

*7 In the instant case, there are no clear and specific allegations of any malafide attributed to any of the respondents, which might have prompted them to pass a wrong order dispensing with services of the petitioner. Only a vague reference has been made contending that respondent No.4 wants to appoint a person of her own choice in place of petitioner when a perusal of the record goes to show that there is no material available on the file to point out towards such allegation. The order appears to have been passed during the course of administrative work and does not come out to be tainted with any element of malafide, partiality, bias or arbitrariness. Vide the impugned order not only extension granted to the petitioner for one year has been withdrawn but disciplinary action has also been*

*recommended against M.E. Raj Kumar and Secretary Municipal Committee, Kalayat, namely Sh. Bambul Singh. It cannot be said that the petitioner has been singled out for action in the matter. Even otherwise the extension period for one year starting from 12.01.2020 has since expired and no reinstatement of the petitioner can be ordered."*

24. The law laid down in the judgment referred in 2022(4) SCT 378 P&H (*supra*) is well recognised by this Court but the judgment of Hon'ble Supreme Court referred by Learned Representative for the workman reported in 2014(11) SCC 85 (*supra*) shall prevail over the judgment of Hon'ble High Court. Accordingly, the termination of services of the workman without compliance of the provisions of the Section 25F of the ID Act is illegal. The management has failed to controvert the workman's plea that he is unemployed and he has not been able to find out any job. Consequently, the termination order dated 06.09.2021 / 09.09.2021 / Exhibit 'M19' is hereby set aside being illegal and the workman is held entitled to reinstatement with continuity of service along with 50% back wages.

25. Accordingly, both these issues are decided in favour of the workman and against the management.

**Issue No. 3 :**

26. Onus to prove this issue is on the management.

27. Learned Representative for the management contended that the present claim petition is not maintainable in the present forum as the appointment of the workman was purely on contractual basis and he could be terminated at any time without any notice during the period.

28. On the other hand, it is contented by Learned Representative for the workman that even if the appointment of the claimant workman is on contract basis, which is liable to be terminated without any notice, even then, the provisions of Section 25F of the ID Act is to be complied with.

29. To my opinion the contention raised by Learned Representative for the management is devoid of merits as already discussed in the joint discussion of issues No.1 & 2, the workman has rendered about 9 years continuous service, which fulfils the requirement of Section 25B of the ID Act, therefore, his services could not be terminated without compliance of Section 25F of the ID Act. In this case, the management has not complied with the conditions incorporated in Section 25F of the ID Act before terminating the services of the workman. On being aggrieved from the act of the management whereby his services were terminated without complying with Section 25F and without issuance of charge sheet and without holding an inquiry, the workman was left with no other option then to raise an industrial dispute. I do not find any defect so far maintainability of the present industrial dispute reference / claim statement is concerned.

30. Accordingly, this issue is decided against the management and in favour of the workman.

**Issue No. 4 :**

31. Onus to prove this issue is on the management.

32. Learned Representative for management contended that the petition is bad for non-joinder of necessary party i.e. District Manager, PUNGRAIN, Gurdaspur. To my opinion, the aforesaid contention raised by Learned Representative for the management is devoid of merits, as District Manager, PUNGRAIN, Gurdaspur is not the appointment authority. The appointment letter of the workman Exhibit 'W1' / 'M1' and the order of termination dated 06.09.2021 / endorsement dated 09.09.2021 / Exhibit 'W16' / Exhibit 'M19' has been issued by the Managing Director, PUNGRAIN, Chandigarh which has been impleaded as management.

33. Accordingly, this issue is decided against the management and in favour of the workman.

**Issues No. 5 & 6 :**

34. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

35. Onus to prove both these issues is on the management.



36. It is argued by Learned Representative for the management that the claimant did not disclose the true facts. The claimant did not disclose that the District Collector, Gurdaspur wrote a letter dated 18.06.2021 / Exhibit 'M12' to the Director, Food Civil Supplies & Consumer Affairs, Punjab with regard to the un-authorised leave taken by the workman, in which it was mentioned that the leave being sent through e-mail was not approved by the competent authority. Even after joining Gurdaspur on 24.05.2021 the workman remained absent willfully for 11 days and used to send his leave through email, which was not approved by the competent authority. The workman is habitual of taking leaves without approval due to which day-to-day work of the office got affected. The workman was directed by the Head Office, Chandigarh vide letter dated 23.07.2021 / Exhibit 'M14' to get his medical examination conducted within 7 days. Office of District Manager, Gurdaspur also wrote a letter on 26.07.2021 / Exhibit 'M16' to get his medical examination conducted but the workman did not get his medical check-up from Civil Surgeon, Gurdaspur. The workman in his reply to show-cause notice / Exhibit 'W15' stated that Civil Surgeon informed him on his visit on 04.08.2021 that no letter was received from Circle Office Gurdaspur. The workman had never informed the office about non-receipt of letters in the office of Civil Surgeon. After passing of the order of termination of services, Jatinder Kaur, wife of Paviterbir Singh (workman) vide letter dated 21.09.2021 / Exhibit 'M5' admitted the mistake committed by the workman during his service and requested that soft treatment be adopted in favour of her husband and prayed for reinstatement to MD, PUNGRAIN. It is thus argued by Learned Representative for the management that the workman has concealed the material facts and estopped by his own act & conduct from claiming the relief. To my opinion, the arguments advanced by Learned Representative for the management are devoid of merits, because the workman has mentioned about letter dated 18.06.2021 / Annexure 'W5', letter dated 28.06.2021 in para 4 of the claim statement. The workman has mentioned about letter dated 23.07.2021 in para 7 of the claim statement. The workman has also disclosed about the leave applications applied by him from time to time. Therefore, there is no concealment of any material fact. The letter Exhibit 'M5' written by Jatinder Kaur wife of workman is subsequent to the termination order. Moreover, the workman has challenged the termination order being illegal and principle of estoppel is not applicable against law.

37. Accordingly, both these issues are decided against the management and in favour of the workman.

**Relief :**

38. In the view of foregoing finding on the issues above, this industrial dispute is allowed. The termination order dated 06.09.2021 / 09.09.2021 / Exhibit 'M19' is set aside being illegal and the workman is entitled to reinstatement with continuity of service along with 50% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Dated : 11.01.2024.

(Sd.) . . . ,  
(JAGDEEP KAUR VIRK)  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No. PB0152.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT**Notification**

The 18th March, 2024

**No. 13/2/81-HII(2)-2024/4480.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **74/2021** dated **14.12.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AJAY KUMAR, S/O SH. RAM DULAR, H.NO. 1459/21, SECTOR 29-B, CHANDIGARH  
(Workman)

AND

1. M/S CHECKMATE SERVICE PVT. LTD., SCF NO. 128, PHASE-3-B2, DISTRICT MOHALI.
2. AXIS BANK LTD., AXIS BANK CURRENCY CHEST, SECTOR 34, CHANDIGARH  
(Management)

**AWARD**

1. Ajay Kumar, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 11.06.2016 the claimant-workman was appointed by management No.1 i.e. M/s Checkmate Services Pvt. Ltd., Mohali as Cash Sorter. The claimant-workman was deployed at the workplace of management No.2 i.e. Axis Bank Ltd., Axis Bank Currency Chest, Sector 34, Chandigarh. The claimant-workman remained there in the continuous employment up to 11.02.2021 when his services were illegally & wrongfully terminated by refusing of work. The claimant-workman was drawing ₹ 17,000/- per month as wages at the time of termination. On 12.02.2021 the claimant-workman went to attend his normal duty but he was refused work by management No.2 on the pretext that the management No.1 has asked them to refuse work to the worker. No reason of refusal of work was given to the claimant-workman by both the managements. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management No.1 has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement the claimant-workman served upon the management a demand notice dated 15.02.2021. The management neither denied the contents of the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The management No.1 appeared before the Conciliation Officer, U.T. Chandigarh one time only and thereafter he did not appear before the conciliation on any date fixed for settlement. The termination is illegal, wrongful, motivated against the principles of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the claimant-workman be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice, management No.1 contested the claim statement by filing written reply dated 12.11.2022 (filed on 06.12.2022) wherein it is stated that the date of commencement is correct but the answering management did not terminate any employee. It is denied as incorrect that both these managements refused work to the claimant-workman. Since no termination was done, thus retrenchment benefits, charge sheet, inquiry to be held before termination etc. are not applicable. The employees collectively absented and refused to come to work, the matter was taken up with disciplinary action, Checkmate Security Services have made sufficient representation at Labour Department. The applicant's plea that action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice is

not acceptable. The claimant-workman's plea of demanding reinstatement with back wages, continuity of service and without any change in service condition etc. is not acceptable. No such intentions and acts were initiated by employer but all outstanding efforts were made to get the employee to work as the company had to face huge losses.

4. Management No.2 contested the claim statement by filing separate written statement dated 01.11.2022 (filed on 01.11.2022) wherein preliminary objection is taken on the ground that the claim statement is not legally maintainable as there is privity of contract between claimant-workman and the answering management and the claimant-workman was never hired by the answering management.

5. On merits, it is denied for want of knowledge that on 11.06.2016 the claimant-workman was appointed as Cash Sorter by management No.1. The answering management had hired the services of management No.1 but appointment and termination of any worker was the sole discretion of management No.1 and the answering management has no role to play in it. The alleged the claimant-workman was not on the roll of bank nor employee of the bank nor even any salary was paid to him by the answering management. No refusal as alleged by the claimant-workman was conveyed by the officials of the answering management. No alleged demand notice was ever served upon the answering management and also no notice was received by the answering management from the office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The claimant-workman never remained employee or worker of the answering management. Rest of the averments of the claim statement are denied being incorrect and prayer is made that claim statement may be dismissed with cost.

6. The claimant-workman filed rejoinder to the written statement of management No.1 on 17.01.2023 wherein contents of the written statement except admitted facts are denied and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 was not filed.

7. From the pleadings of the parties, following issues were framed vide order dated 20.03.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits as prayed for ? OPW
3. Whether the claim statement qua management No.2 is not maintainable? OPM (management No.2)
4. Relief.

8. In evidence, claimant-workman Ajay Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 08.09.2023 Learned Representative for the claimant-workman closed the evidence in affirmative.

9. On the other hand, management No.2 examined MW1 Amit Rajpal - Senior Manager, Axis Bank, Sector 34, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'.

10. Management No.1 examined MW2 Jaspal Singh - DGM (Banking) of M/s Checkmate Services Pvt. Ltd., Phase 3B-II, SAS Nagar Mohali, who tendered into evidence his affidavit vide Exhibit 'MW2/A' along with notary attested copies of documents

**Exhibit 'MW2/1'** is authority letter dated 28.03.2019 in Jaspal Singh issued by the Managing Director & Company Secretary of management No.1.

**Exhibit 'MW2/2'** is aadhar card of Jaspal Singh.

**Exhibit MW2/3'** is warning letter dated 12.02.2021 issued to the workman by the authorised signatory of management No.1 through courier

**Exhibit 'MW2/3-A'** is original receipt of DTDC Courier Agencies.

**Exhibit 'MW2/4'** is absenteeism letter dated 22.02.2021 for not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.



**Exhibit 'MW2/4-A'** is original postal receipt dated 24.02.2021.

**Exhibit 'MW2/5'** is letter dated 17.03.2021 for final intimation on not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/5-A'** is original postal receipt dated 19.03.2021.

**Exhibit 'MW2/6'** is original undelivered courier envelop bearing remarks 'No Such SCO/H.NO.'

**Exhibit 'MW2/7'** is original undelivered registered letter accompanied with acknowledgment bearing postal endorsement 'No Such SCO / H.No.'

**Exhibit 'MW2/8'** is original undelivered registered letter accompanied with acknowledgment bearing postal endorsement 'no such person'.

11. In cross-examination of MW2 conducted by the workman, MW2 brought into evidence photocopy of movement order of the claimant-workman vide Mark 'I'.

12. On 16.11.2023 Learned Representative for management No.2 closed the evidence on behalf of management No.2. On 06.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed oral evidence. On 14.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed documentary evidence.

13. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

**Issue No.1 to 3 :**

14. Onus to prove issue No.1 & 2 is on the workman and onus to prove issue No.3 is on management No.2.

15. Under these issues, claimant-workman Ajay Kumar examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity.

16. Management No.1 has examined MW2 Jaspal Singh - DGM (Banking), who vide his affidavit Exhibit 'MW2/A' deposed that he is working with management No.1 as Deputy General Manager (Banking) with Employee Code EMP/COR006558, Office at SCF 128, Phase 3B-II, SAS Nagar, Mohali from 06.05.2014 and he is personally aware of the facts of this case. Management No.1 is a company registered as per the provisions of the Company's Act, 1956. Management No.1 is engaged in business of providing security services, cash sorter services across the India to its customers on the basis of requirement and as per contract terms and agreement. Contrary to the workman's claim of illegal termination, he submits that the employment of the claimant-workman was not terminated rather transferred to another location in accordance with company's policies and operational requirements. The decision to transfer the claimant-workman was made after due consideration of company's business needs and without any malice or intent to cause harm to the claimant-workman. Due to exigency of work in the other location of management No.1, he as DGM (Banking) transferred the following four employees to their Ahmedabad office as per company's requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

These employees were transferred to their Ahmedabad office. They were given transfer letters given by hand to report to Checkmate, Ahmedabad Office under his instructions (as per company's requirement) on 11.02.2021 but they refused to accept. After that the transfer letter was sent by DTDC Courier on dated 12.02.2021 and they refused to accept again. These letters were given in person which they refused to accept. They were briefed regarding the transfer, which they refused to accept, return letter with remarks of

refusal. The transfer letters were displayed on the notice board of the Axis Bank on same day i.e. on 11.02.2021. On 12.02.2021, he was on leave and was attending function at his home town, when he received a call from Mr. Ritesh Kumar - Branch Manager, Axis Bank, stating that no employee of Checkmate Services had reported for duty and when they and he had tried to contact their employee, they were absent. The claimant-workman stated that they will not come to work and all were not willing to come for duty any more. He informed about the mass absenteeism by the claimant-workman and repeated calls were received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employee who have not come on duty, the bank will not accept such un-authorised absence from their staff as bank work stuck up due to cash sorter not reporting for duty. He kept on calling absentee employees from his phone but his phone was not picked by any of the absent employees for the next 2 days i.e. 12.02.2021 to 14.02.2021. On resuming his office on 15.02.2021, he himself again tried to contact the absconding employees, only Mr. Ravi Kumar, EMP/CHD05592 and Mr. Pankaj Kataria, EMP/CHD/03936 picked the call and agreed to come to Mohali Office SCF 128, Phase 3B-II, SAS Nagar Mohali. On next day i.e. 16.02.2021 he himself tried to convince both the absconded employees to resume their duties as the bank officials were putting lot of pressure and the work stoppage had very negative impact on the bank services and their reputation and high penalty clause in the agreement. Both the employees Mr. Ravi Kumar and Mr. Pankaj Kataria were ready to understand and joined the duties but stated that other fellow employees had threatened them not to join the duty. Meanwhile they have appointed new staff in place of absconded employees to fill the bank requirement and their repetition as service provider as well to avoid high penalty of non-providing contractual staff as per agreement. Also they have approached the absconded staff to join duty at the other place. They have requirement at Ahemdabad, for that they had sent the letter through RP/AD post letter dated 11.02.2021 as well sent the absenteeism letters on 22.02.2021 and final letter on 17.03.2021 to the claimant-workman to join duty as his services has not been terminated nor any violation of his appointment services conditions. In the case of Namrata Verma Versus the State of Uttar Pardesh and Others, Hon'ble Supreme Court of India in case number Special Leave to Appeal (C) No(s).36717/2017 it was established that employer has the right to transfer employee as per the business requirement of the employer. He asserts that the management has never terminated the services of the claimant-workman. On the contrary the management has provided multiple opportunities to the claimant-workman to re-join duty even after a mass absconding incident incurred. The claimant-workman however failed to respond or re-join and instead engaged in mass absconding without any prior intimation. This action appears to be an attempt to harass both the managements to coercive tactics by the claimant-workman. The management remains willing to offer employment as there has been no formal termination of services. Consequently, there is no basis for claims related to back wages or any other form of compensation, given that the service has not been terminated. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/8' and Mark 'M1'.

17. The management No.2 examined MW1 Amit Raj Pal - Senior Manager, Axis Bank, who vide his affidavit Exhibit 'MW1/A' wherein he deposed that the present alleged claim filed by the claimant against management No.2 is legally maintainable as there is no privity of contract between claimant and management No.2 and the claimant was never hired by management No.2. Management No.2 had hired the services of management No.1 but the appointment and termination of any worker was the sole discretion of management No.1. Management No.2 had no role to play in it. The alleged claimant was not on the roll of the bank, nor employee of the bank nor even any salary was paid to him by management No.2. No notice as alleged was ever served upon management No.2 and also no notice was received by management No.2 from the office of Additional Labour Commissioner-cum-Conciliation officer, U.T. Chandigarh. The claimant never remained employee or worker of management No.2.

18. From the oral as well as documentary evidence led by the parties it comes out that undisputedly the claimant-workman was appointed on 11.06.2016 as Cash Sorter by management No.1 and was deployed at the work place of management No.2. In this regard, AW1 when to put to cross-examination by management

No.2 stated that Axis Bank / management No.2 did not issue him any appointment letter and termination letter / order. He was deployed with the Axis Bank / management No.2 by M/s Checkmate i.e. management No.1. MW1 (witness of management No.2) when put to cross-examination by the workman admitted as correct that the Axis Bank has contract with the Checkmate Services for providing the manpower. MW1 admitted as correct that the Checkmate Services provided about 15 workers including the claimant of the present case for deployment with Chandigarh Branch of Axis Bank. MW1 stated that bank was not maintaining the attendance of contractual workers. The supervisor of Checkmate was maintaining their attendance. The bank had not been supervising the disbursement of wages and provident fund etc. of the contractual workers. MW2 Jaspal Singh (witness of management No.1) when put cross-examination by the workman stated that the agreement of management No.1 with the Axis Bank Ltd. / management No.2 was at central level and there was no local agreement. Under the said agreement, management No.1 provided 18 workers to management No.2 around year 2016. From the above-mentioned version of AW1, MW1 and MW2 it is duly established on record that management No.1 i.e. M/s Checkmate Services Pvt. Ltd. is service provider, who under the contract has provided security services and Cash Sorter services to management No.2 i.e. Axis Bank, Sector 34, Chandigarh and the claimant-workman was deployed by the management No.1 at the work place of management No.2 as a Cash Sorter. Since management No.1 maintained the record of attendance and supervision of work of claimant-workman through its Supervisor, thus the claimant-workman was under the direct employment of management No.1 and was a contractual worker deployed with management No.2. There is no direct relationship of employer-employee between management No.2 and claimant-workman. Since management No.2 has hired the services of claimant-workman from its service provider i.e. management No.1, therefore, management No.2 was necessary party, being principal employer, and the claim qua management No.2 is duly maintainable.

19. Admittedly, the authority to appoint, transfer and terminate the contractual employee (herein claimant-workman) was with the service provider i.e. management No.1. Learned Representative for the claimant-workman argued that the claimant-workman remained in continuous employment of the management No.1 from the date of appointment i.e. 11.06.2016 up to 11.02.2021, thus completed 240 days of continuous service in 12 calendar months preceding termination of his services (service being verbally terminated on 12.02.2021). The claimant-workman has alleged that his last drawn wages were ₹17,000/- per month. In this regard MW2 (witness of management No.1) was put to cross-examination by workman stated that there is no dispute with regard to the date of appointment, amount of monthly salary and the date of dispensing with of their services. MW2 further stated that all the workers including the workman had continuously worked for more than 240 days in 12 calendar months preceding their absence from duty.

20. Management No.1 has taken the plea that 15 contractual workers were deployed with management No.2. On 11.02.2021, out of 15 contractual workers, 4 workers namely Ravinder, Joginder Pal, Suresh Kumar and Ajay Kumar (Ajay Kumar workman in the present case) were transferred to Ahmedabad. 4 workers who were transferred refused to accept the transfer letter and refused to join at Ahmedabad. The transfer-cum-movement order was also affixed on the notice board of management No.2 i.e. Axis Bank Limited. In order to put pressure upon the management No.1 to cancel the transfer order of four employees all 15 contractual workers collectively absented from duty w.e.f. 12.02.2021. After extensive follow-ups, 2 workers returned to duty with the same employment terms & conditions whereas the remaining 13 including the workman of the present case did not resume duty. The workman Ajay Kumar failed to report on duty at Ahmedabad as directed vide movement order Mark 'M1'. It is further argued by Learned Representative for management No.1 that M/s Checkmate Service Pvt. Ltd. has not terminated the service of any of the workman in any manner. Management No.1 has followed due procedure issuing absenteeism letters and reminders, emphasising the company's intent for workman to resume duty. Management No.2 made various efforts to personally serve the movement-cum-transfer order to the claimant-workman but he refused to receive. Management No.1 also issued warning letter dated 12.02.2021 / Exhibit 'MW2/3' through courier vide receipt



Exhibit 'MW2/3A', issued another absenteeism letter dated 22.02.2021 / Exhibit 'MW2/4' vide postal receipt Exhibit 'MW2/4A' and final intimation for not reporting on duty vide letter dated 17.03.2021 Exhibit 'MW2/5' through registered post vide Exhibit 'MW2/5A'. Despite issuance of various letters, the claimant-workman did not join back the duty, thus, the claimant-workman himself abandoned the job, though his services were never terminated by management No.1. The workman failed to report to his duty at the work place without any prior notice or explanation which is a clear violation of company's policy and established work expectations. The employer has the inherent right to manage its work force including making decisions regarding re-location. Management No.1 has acted in accordance with its established policies and procedures which were communicated to all the employees by all means to join duty.

21. On the other hand, Learned Representative for the workman contended that no letter / letters as alleged by management No.1 were ever received by the claimant-workman. There is nothing on record to show that the letters allegedly issued through courier or registered post were actually delivered to the claimant-workman. Besides, neither the original movement order / transfer order nor carbon copy of the same is brought into evidence by management No.1 despite availing opportunity to produce the same. Furthermore, the alleged transfer order / movement order is violation of Section 9-A of the ID Act and in contravention to The Fourth Schedule to Section 9-A of the ID Act. As proved from cross-examination of MW2 Jaspal Singh (witness of management No.1), the workman had continuously worked for more than 240 days in 12 calendar months preceding his alleged absence from duty, the claimant-workman fulfills the requirement of continuous service as defined under Section 25-B of the ID Act. Once the workman is covered under Section 25-B of the ID Act, then the provision of Section 25-F stands attracted. For better appreciation Section 25-F of the ID Act is reproduced as below :-

**"25F. Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

22. Section 25-F of the ID Act lays down certain conditions which are precedent to retrenchment of workman. In the present case, the management No.1 has taken the plea that the claimant-workman absented from duty w.e.f. 12.02.2021. As per plea of management No.1, the claimant-workman was transferred to Ahemdabad by issuing movement order but the claimant-workman failed to report on duty at Ahemdabad as per the directions given in the movement order. To my opinion, the contention raised by Learned Representative for the claimant-workman carries force as MW2 (witness of management No.1) when put to cross-examination by workman stated in his statement recorded on 30.11.2023 stated that some of the letters were issued through courier and some through speed post to the workers. First warning letter was issued through courier to all absentee workers. No delivery report of courier was received from the concerned courier agency. In the claim statement address of the claimant-workman is mentioned as House No.1459/21, Sector 29-B, Chandigarh whereas the letters Exhibits 'MW2/6', 'MW2/7' and 'MW2/8' are issued to the claimant workman on different address i.e. House No.1459/29, Sector 29, Chandigarh and the said letters Exhibit 'M2/6' and Exhibit 'M2/7' are received back undelivered with the postal endorsement 'no such house number' and letter

Exhibit 'M2/8' is received back with the report wrong address. Management No.1 in cross-examination of claimant-workman / AW1 did not put his postal / correspondence address to him. Therefore, oral version of MW2 (his voluntary statement) in his cross-examination recorded on 06.12.2023 that the letters were issued to the workman as per his address available on record is insufficient to assume the delivery of letters. The management No.1 did not produce their office record into evidence showing the local address of the claimant-workman.

23. MW2 Jaspal Singh in his cross-examination (recorded on 30.11.2023) denied the suggestion as wrong that vide letter dated 17.03.2021 / Exhibit 'MW2/5' the services of the workman were terminated. To my opinion, the denial on part of MW2 that the management did not intend to terminate the services of the workman by issuing letter dated 17.03.2021 / Exhibit 'MW2/5' is not acceptable because in his cross-examination MW2 admitted as correct that vide letter Exhibit 'MW2/5' the workman was directed to complete his clearance formalities for full & final settlement. The aforesaid admission on part of MW2 would suggest that the management No.1 intended to effect full & final settlement with the workman, which can be done only when the workman is relieved from service and not during continuity of his service.

24. As far as movement / transfer order is concerned, MW2 in his cross-examination (conducted by the workman) recorded on dated 30.11.2023 stated that the workers Ravinder, Joginder Pal, Suresh Kumar S/o Milap Chand and Ajay were transferred from Chandigarh to Ahmadabad. He is in possession of carbon copies of movement orders issued to aforesaid workers directing them to report at the transferee station. Today, he has not brought the copies of the movement orders. MW2 further stated that except the movement orders there is no other separate transfer orders of workers. Remaining cross-examination of MW2 on 30.11.2023 was deferred for producing the alleged movement order by the witness. MW2 when recalled for his remaining cross-examination on 06.12.2023 stated that original and the carbon copies of the movement order / orders are not traceable. He has brought photocopy of movement order relating to workman Ajay Kumar and the same is Mark 'M-1'. In this manner the management No.1 despite availing opportunity failed to sufficiently prove into evidence the alleged movement / transfer order of the claimant-workman. The document Mark 'M-1' is a photocopy, its original or carbon copy is produced into evidence, therefore, no authenticity is attached to Mark 'M-1'. Above all management No.1 in its written statement nowhere pleaded that the claimant-workman was ever issued any movement order / transfer order and that the claimant-workman did not report on duty at Ahmedabad. It is not the case of management No.1 that they have ever received any intimation from Branch Office of management No.1 at Ahmedabad that the claimant-workman did not report on duty as per the movement order. In this regard, MW2 in his cross-examination dated 30.11.2023 stated that no intimation was received from their branch office at Ahmedabad that the workman did not turn up to join duty. MW2 Jaspal Singh in his cross-examination stated that in the written reply filed by management No.1, it is nowhere mentioned that the worker was transferred from Chandigarh to some other place. MW2 in his cross-examination admitted as correct that there is no reference of Ahmedabad in letter Exhibit 'MW2/3' to Exhibit 'MW2/5'.

25. The management's plea that the workman was transferred as per company's policy is devoid of merits because there is no evidence of management No.1 to prove the fact that the service of the workman was transferrable. The nature of job being transferable or non-transferable can be ascertained either from the appointment letter or certified standing orders of the company (herein management No.1). In the present case, neither there is any appointment letter of the workman issued by management No.1 nor there is any certified standing orders of management No.1. It is not case of the management No.1 that there was any settlement between the workman and management No.1 relating to transfer policy. MW2 in his cross-examination stated that the employees deputed in the territory U.T. Chandigarh are issued appointment letters and transfer orders from Chandigarh office of M/s Checkmate Services Pvt. Ltd. / management No.1. As discussed above, in the present case neither any appointment letter nor any transfer order is proved into evidence. In the absence of

appointment letter, Certified Standing Orders and any settlement between the parties, The Fourth Schedule and Section 9-A of the ID Act would be attracted if the transfer of the workman results in change of service conditions.

26. Undisputedly, the workman was drawing ₹ 17,000/- as wages per month at the time of termination. MW2 in his cross-examination stated that the workman was verbally told that wages to him at Ahmedabad will be paid as per the minimum wages of that state. Management No.1 did not prove into evidence the Minimum Wage List of Ahmedabad (Gujarat). However, during course of arguments Learned Representative for the management No.1 failed to controvert the contention of Learned Representative for the workman that minimum wages at Ahmedabad are much lesser than the monthly wages drawn by the workman at Chandigarh. As per Section 9-A of ID Act, no employer who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in Fourth Schedule, shall effect such change,-

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change -

- (a) .....
- (b) .....

27. The Fourth Schedule of the ID Act incorporates conditions of service for change of which notice is to be given. The relevant conditions mentioned at serial No.9 and 11 of The Fourth Schedule of ID Act are reproduced as below :-

- "9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders.*
- 11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control)*

28. MW2 in para 5 of his affidavit Exhibit 'MW2/A' deposed that due to exigency of work in other locations of respondent No.1 requirement, he as the DGM Banking, transferred the following employees to their Ahmedabad office as per company requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

29. In the present case, first of all the aforesaid plea taken by MW2 in his examination-in-chief by way of affidavit Exhibit 'MW2/A' is beyond pleadings. Secondly, MW2 in para 8 of his affidavit Exhibit 'MW2/A' deposed that he informed about the mass absenteeism by the applicant and repeated calls received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employees, who are not coming on duty, the bank will not accept such un-authorised absence from their staff, as Bank work was stuck up due to Cash Sorter not reporting for duty. The aforesaid version of MW2 is also beyond pleadings. Besides Axis Bank / management No.2 in its written statement / reply nowhere mentioned that Mr. Ritesh - Branch Manager, Axis Bank telephonically informed the management No.1 about any un-authorised absence of the workman from duty. Management No.1 and 2 did not examine Mr. Ritesh - Branch Manager in their evidence. Moreover, there is no documentary evidence on record to show the company's requirement at Ahmedabad office of management No.1. Under these circumstances, the transfer of the workman from Chandigarh to Ahmedabad on lesser monthly wages amounts to change in his service conditions. Section 9-A and The Fourth Schedule of the ID Act prohibits imposing any change in service condition without notice. Section 9-A of the ID Act requires employer proposing to adversely change certain service conditions of



covered workman to provide notice of 21 days of the proposed change to the impacted workman. In the present case, it is own plea of management No.1 that transfer order was of 11.02.2021 directing the workman to join at other location at Ahmedabad on 12.02.2021. Before issuing the alleged transfer order / movement order management No.1 failed to provide notice of 21 days to the concerned workman, which is violation of The Fourth Schedule and Section 9-A of the ID Act.

30. If for the sake of arguments, it is assumed that the claimant-workman absented from duty w.e.f. 12.02.2021, then also at the most it amounts to misconduct and since the workman fulfills the requirement of Section 25-B of the ID Act, thus management No.1 was bound to comply with the conditions incorporated in Section 25-F of the ID Act. But management No.1 has failed to comply with mandatory conditions as laid down in Section 25-F of the ID Act. In this regard, MW2 when put to cross-examination by the workman stated that no charge sheet was served to the workman for his alleged absence from duty. Neither any preliminary inquiry nor any regular domestic inquiry was conducted against the workman. No retrenchment compensation was paid to the worker. From the aforesaid version of MW2, it is established that management No.1 has violated the provisions of Section 25-F of the ID Act. The judgment referred by Learned Representative for the workman reported in **2014(11) SCC 85** titled as **Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited** is applicable to the facts of the present case to an extent. The relevant portion of the judgment is reproduced as below:-

*"Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, 2010(3) S.C.T. 319 : 2010(5) SCC 497 as under:-*

*13.... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 Supreme Court 610, Bombay Union of Journalists v. State of Bombay, (1964) 6 SCR 22, State Bank of India v. N. Sundara Money, (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala, (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 255, L. Robert D'Souza v. Executive Engineer, Southern Railway, (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, (1980) 4 SCC 443, Gammon India Ltd. V. Niranjan Das, (1984) 1 SCC 509, Gurmail Singh v. State of Punjab, 1991(3) S.C.T. 608 : (1991) 1 SCC 189 and Pramod Jha v. State of Bihar, 2003(2) S.C.T. 296 : (2003) 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his services was not terminated."*

31. MW2 Jaspal Singh, witness of Management No.1 / service provider during his cross-examination expressed his readiness to re-join the worker but refused to give him the benefit of continuity of service and back wages. In this regard, MW2 when put to cross-examination by the workman stated that we are ready to take in service absentee workers as per availability of vacancy at Chandigarh and nearby stations such as Ludhiana, Jalandhar and Panchkula. MW2 further stated that they are not ready to re-join the workers with continuity of service. They are also not ready to pay back wages for the period of their absence from duty. MW2 denied the suggestion as wrong that re-joining of a workman without continuity of service amounts to fresh appointment. To my opinion, the conditional offer of management No.1 / service provider to re-join the workman as per availability of the vacancy and without the benefits of continuity of service & back wages is unjustified because as discussed above, in this case, the termination of services of the workman is held illegal being in violation to Section 25-F of the ID Act. In case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule. The workman is entitled to the relief of reinstatement with continuity of service under the same terms & conditions as existed before his termination.

32. As far as back wages are concerned, the claimant-workman has alleged that he remained unemployed during the period from the date of termination till date. On the other hand, none of the managements have taken plea of gainful employment in their respective written statements. However, it is argued by Learned Representative for management No.1 that as per the judgment of Hon'ble Supreme Court in *Civil Appeal No. 5390 of 2019 decided on 11th July* titled as *Chief Regional Manager, United India Insurance Company Limited United India Insurance Company Limited the Versus Siraj Uddin Khan*; principle of 'no work, no pay' applies. In case, the workman is to be reinstated he is not entitled to back wages. To my opinion, the judgment referred (*supra*) by Learned Representative for management No.1 is not applicable to the facts of the present case in view of the judgment referred by Learned Representative for the workman titled as *P.G.I. of M.E. and Research Versus Raj Kumar*, report in *2001(2) SCC 54*. Under the circumstances, the workman is held entitled to 50% back wages.

33. In the view of discussions made above, termination of the workman is held illegal being in violation to Section 25-F of the ID Act as such the workman is entitled to reinstatement with continuity of service and 50% back wages.

34. Accordingly, issue No.1 & 2 is decided in favour of the workman and against management No.1. Issue No.3 is decided against management No.2 and in favour of the workman.

**Relief :**

35. In the view of foregoing finding on the issues No.1 & 2 above, this industrial dispute is allowed qua management No.1. The workman is entitled to reinstatement with continuity of service and 50% back wages. Management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which management No.1 is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 14.12.2023.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT**Notification**

The 18th March, 2024

**No. 13/2/96-HII(2)-2024/4484.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **107/2018** dated **18.01.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJ KUMAR, AGED 39 YEARS, S/O SH. CHANDI RAM, R/O HOUSE NO.1836, PHASE - I, RAM DARBAR, UNION TERRITORY CHANDIGARH. (Workman)

AND

M/S EMPLOYEES STATE INSURANCE CORPORATION, REGIONAL HEADQUARTERS, SECTOR 19-A, MADHYA MARG, U.T. CHANDIGARH THROUGH ITS REGIONAL DIRECTOR.

M/S ESI CORPORATION MODEL HOSPITAL, INDUSTRIAL AREA, PHASE - 2, UNION TERRITORY CHANDIGARH THROUGH THE DEPUTY DIRECTOR.

M/S EAGLE EYE SECURITY AGENCY, BOOTH NO. 433, SECTOR 8 (BEHIND PETROL PUMP), PANCHKULA, HARYANA THROUGH ITS PROPRIETOR/PARTNER. (Management)

**AWARD**

1. Raj Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman joined the services of managements / employers No.1 to 3 w.e.f. 18.10.2010 and worked continuously without any interruption or break in the services till 30.09.2017. On 30.09.2017, the workman was served the termination letter dated 29.09.2017 to the effect that the services of the workman stand terminated w.e.f. 30.09.2017. The date of joining of workman is wrongly mentioned in the termination letter. The allegations levelled against the workman are false, baseless, concocted and fabricated with malafide intentions with the aim to defame the workman and to dis-mantle the workers' union of which the workman is General Secretary. The workman was serving as Sweeper. At the time of retrenchment of services, he was drawing wages @ ₹ 12,670/- per month i.e. as per D.C. Rates. The workman worked up to the entire satisfaction of his employer. The workman was never issued any show cause notice, warning, charge-sheet or any other memo to question his work & conduct till 01.07.2017 covering his service period more than 06 years. The workman worked in the hospital when the contractor was M/s Golden Eagle Security Company till 31.03.2011. After this another contractor in the name & style of M/s Eagle Eye Security Agency took over the charge from 01.04.2011 and remained there till 30.04.2016. Then another contractor in the name & style of M/s Pawan Bajaj Government Approved Contractor took charge w.e.f. 01.05.2016 and left the charge on 30.06.2017. Now fourth contractor in the name & style of M/s Eagle Eye Security Agency took charge w.e.f. 01.07.2017. With the change of contractors, the services of the workman were not disturbed. All the workers worked continuously. They were neither retrenched nor removed from the services by paying retrenchment / termination benefits. At the time of his appointment, he was not issued appointment letter. The workman is enrolled under ESI Scheme and Provident Fund Scheme. When the workman joined the services of the employer, there were more than 35 workers working in the ESIC Hospital. At the time of joining the services of ESIC Hospital, the workers were not paid even the minimum rate of wages. The workers formed the Union and through the union raised their genuine demands and the management / employer settled to pay the wages at the DC Rates

applicable in Chandigarh. The workman being General Secretary of the Union was holding meetings of the Executive Committee of Union and was taking up the issues of worker from time to time with the management. These activities of the workman were not acceptable to the management / employer especially M/s Eagle Eye Security Agency and they started indulging in unfair labour practices and putting pressure on the office bearers including the workman to quit the union and its activities. As the workman was performing his duties strictly as per the provisions of Trade Unions Act, 1926 (*here-in-after referred as 'Act 1926'*) but the management / employer was illegally suppressing the lawful activities of the workers. Verbal order of employer dated 29.07.2017 is illegal, un-justified, against the principles of natural justice, highly arbitrary and patently malafide and liable to be set aside on the following grounds :-

- i) The workman worked continuously for more than 6 years and at the time of his retrenchment / termination neither any notice of retrenchment was served nor notice pay was paid to him. The order of retrenchment / termination dated 29.07.2017 was passed in violation of Section 25F of the ID Act.
- ii) At the time of passing verbal orders of retrenchment / termination of the services of the workman, his juniors were retained in the service. Hence, order dated 29.09.2017 was passed in violation of Section 25G of the ID Act.
- iii) No charge-sheet was served on the workman, no inquiry was held and no opportunity was given to the workman to defend himself.
- iv) The workman is General Secretary of the Union. He along with other workers was raising demand of all the workers as allowed under the provisions of the Act 1926.

After the termination of his services, the workman raised demand notice dated 24.10.2017 under Section 2A of the ID Act. A copy of said demand notice was sent to the employers / management through Registered Post with AD, with the prayer to withdraw the termination order dated 29.09.2017 and reinstate the workman in the services with continuity of service along with full back wages for the period of his forced unemployment, within 15 days from the services of the notice. When the workman did not get any response from the management / employer, he submitted a set of five copies of demand notice along with Form 'F' before the Assistant Labour Commissioner, U.T. Chandigarh with the prayer to summon the management and initiate the conciliation proceedings at the earliest in the interest of justice. The Assistant Labour Commissioner-cum-Conciliation Officer summoned the management / employer and initiated the conciliation proceedings. The matter could not be solved and Assistant Labour Commissioner-cum-Conciliation Officer issued certificate Memo No.2136 dated 04.06.2018 to this effect. Prayer is made that the workman may be re-instated in the services with continuity of services and full back wages.

3. On notice, management No.1 & 2 contested the claim statement by filing written reply dated 16.05.2019, filed on 17.05.2019 on behalf of management No.1 & 2, signed by Mr. H. S. Meena - Deputy Director of management No.2 wherein it is submitted that the present reply is being signed, verified and filed by Mr. H. S. Meena - Deputy Director of management No.2. He is well conversant with the facts of the present case and competent to file and sign the reply.

4. Further, preliminary objections are raised on the grounds that the claim petition is not maintainable as per facts & law qua management No.1 as the claimant-workman was never employed directly or indirectly at any point of time by management No.1. No relationship of employer-employee is established at any point of time between management No.1 and the claimant-workman. The claim petition is bad for mis-joinder and non-joinder of parties as management No.1 is unnecessarily made party in the claim petition despite the fact that the claimant-workman does not disclose any cause of action qua management No.1. No relief is sought against the management No.1. The workman is not entitled for any relief qua management No.1. The management No.1 is Employees' State Insurance Corporation, a Social Security Organisation, creation of special Act of Parliament, working under administration & control of Ministry of Labour & Employment,



Government of India. Management No.1 has no administrative authority to deal with any kind of administrative affairs of management No.2. The Medical Superintendent of management No.2 has independent powers to take all the administrative decision for management No.2. No cause of action arose qua management No.2 under the ID Act. The claimant-workman was not direct employee of management No.2 but was employed by contractor-management No.3 under a contract and his engagement with management No.2 as per contract agreement executed between management No.2 & 3. The claimant-workman has never worked under the supervision & control of management No.2. The relief of retrenchment compensation / reinstatement, if any, at the best is the dispute between the claimant-workman and management No.3. The answering managements have no role to play in it. The relationship between management No.2 & 3 was contractual valid from 01.07.2017 to 30.06.2018 and the same is extended up to 30.06.2019. As per the contract, management No.3 was well within in his powers to engage casual workmen on contractual basis and all the administrative actions against any of workman like transfer / termination of services was with management No.3. The wages are paid to contractors, management No.3, as per the minimum wages for the workers who were deployed by management No.3 with the answering management-hospital, as per the bills submitted by management No.3 to management No.2. Besides, the work contract executed between management No.2 & 3 makes it emphatically clear in an un-ambiguous terms that the wages of the workmen employed by contractor shall be paid to him only and even the requisite contribution towards EPF and ESI shall be deposited by contractor / management No.3 with the statutory authorities. Payment of the contractor, management No.3 under the work contract is to be made by the answering management No.2 as per his bills and the payments to the workers are to be made by management No.3. The claimant-workman is not a 'workman' within the meaning of Section 2(s) of the ID Act. The claimant-workman was not employed by management No.2. The claimant-workman was employed by management No.3. Two complaints were given by two women i.e. one by Smt. Suman W/o Om Parkash working in hospital and other by Smt. Poonam W/o Dharambir, a workman working in hospital against the claimant-workman regarding harassment and misbehaviour. The said complaints were forwarded by management No.2 to management No.3 vide letter dated 05.09.2017. Management No.3 / contractor has issued warning letter to the claimant-workman and then action has been taken as per law. The claimant-workman not being the direct employee of the answering management cannot seek reinstatement under the law. Besides, the claim petition is liable to be dismissed as per the law enunciated by Hon'ble Supreme Court in General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon Versus Bharat Lal etc. reported in 2011 LLR 113 and International Airport Authority of India Versus International Air Cargo Workers' Union & Another reported in 2009(3) LLN 489.

5. Further on merits, it is stated that two complaints were given by two women i.e. one by Smt. Suman W/o Mr. Om Parkash working in hospital in Ladies Section and the other by Smt. Poonam W/o Dharmabir, a workman working in the hospital against the claimant-workman regarding harassment and misbehaviour. The said complaints were forwarded by management No.2 to management No.3 vide letter dated 05.09.2017. Management No.3 / contractor issued warning letter to the claimant-workman. The engagement of workman was contractual as per the work contract by the answering management No.2 and the appointment of the workman falls under Section 2(oo)(bb) of the ID Act and the same is in accordance with terms of engagement. Therefore, the claimant-workman is not entitled to the benefits as per Section 25F of the ID Act. It is a matter of record that at the time of joining service more than 35 workers were working in ESIC Hospital. The payment to the contractor under the work contract is to be made by the answering management No.2 and the payment to the workers is to be paid by management No.3. The payment to contractor / management No.3 are made as per DC rates by the answering management No.2 as it is evident from bills and invoices. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim petition may be dismissed.

6. Management No.3 contested the claim statement by filing separate written reply wherein it is stated that the present reply is being signed, verified and filed by M/s Eagle Eye Security Agency through its Proprietor Col. Nirbhay Singh, who is well conversant with the facts of the present case.

7. Further preliminary objections are raised on the ground that the present claim petition is not maintainable as the workman has not approached this Hon'ble Tribunal with clean hands and concealed true and material facts. The workman was running under warning and has not mended his ways with serious allegation of harassment to women staff members. The workman cannot take benefit of his own wrong. The present petition is bad in the eyes of law and contrary to Section 2(s) of the ID Act. There had been no dispute of employee and workman at any point of time between management No.3 and the claimant-workman. The claimant-workman is not entitled for any benefits under Section 25F of the ID Act as termination of his services is not a 'retrenchment' as per Section 2(o) of the ID Act. Claimant-workman is not entitled to any relief as he was not in a continuous service with the answering management for more than 240 days in a year, hence the claimant-workman is not entitled to any retrenchment compensation qua management No.3.

8. Further on merits, it is stated that no cause of action ever raised in favour of the workman. The services of the workman were rightly terminated and was totally justified by management No.3 vide termination letter No.EESA/ESIC/05 dated 29.09.2017. The services of the workman were terminated on account of disciplinary action due to serious complaints filed by women employees namely Suman and Poonam against him which contained serious allegations. Before issuing of termination letter, the workman was already running under warning vide warning letter No.EESA/HK/W/17 dated 20.07.2017. Even then, the workman did not mend his ways and continued harassing the other employees, especially women employees. Workman has created an atmosphere of insecurity against women co-workers. The answering management also received a letter dated 05.09.2017 from ESI Corporation Model Hospital, Industrial Area, Phase - II, Ramdarbar, Chandigarh against the workman. As per record with management No.3, the workman was appointed as Housekeeper vide appointment letter dated 01.07.2017. Even after warning letter, the workman did not mend his ways, hence he cannot take benefit of his own wrong. The workman may be put to strict documentary proof regarding his statement in para 3, 5 to 14. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed.

9. The workman filed rejoinder to the joint written reply / written statement of management No.1 & 2 and separate rejoinder to the written statement of management No.3 wherein the contents of respective written statements, except the admitted facts, are denied as wrong, false and misleading and averments of claim statement are reiterated.

10. From the pleadings of parties, following issues were framed vide order dated 08.08.2019 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between management No.1 and 2 and workman ? OPM-1& 2
3. Relief.

11. In evidence, workman Raj Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W10'.

**Exhibit 'W1'** is copy of demand notice dated 24.10.2017 raised by workman Raj Kumar to The Regional Director - Employees State Insurance Corporation, U.T. Chandigarh, The Deputy Director, ESI Corporation, Model Hospital, U.T. Chandigarh and M/s Eagle Eye Security Agency, Panchkula.

**Exhibit 'W2'** is failure report bearing Memo No.2136 dated 04.06.2018 of Assistant labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh relating to the demand notice raised by the workman.

**Exhibit 'W3'** is copy of the letter dated Nil issued from workman Raj Kumar and others to Medical Superintendent, ESI Hospital, Ramdarbar, Phase - II, Chandigarh relating to payment of wages on DC rates to the workers.

**Exhibit 'W4'** is copy of written complaint dated Nil moved by Raj Kumar to Chief Medical Officer, ESI Hospital, Industrial Area, Phase - II, Chandigarh on the subject of mental harassment by co-workers.

**Exhibit 'W5'** is copy of written complaint dated 16.07.2017 addressed from Poonam W/o Dharamvir to Deputy Director, ESI Hospital, Ramdarbar, Phase - II, Chandigarh.

**Exhibit 'W6'** is copy of written complaint dated 14.07.2017 addressed from Suman - *Safai Karamchhari* to Deputy Director, ESI Hospital, Industrial Area, Phase - II, Ramdarbar Chandigarh.

**Exhibit 'W7'** is letter dated 05.09.2017 addressed from Harsharan Meena - Deputy Director (Admn) to Eagle Eye Security Agency, Panchkula, Haryana relating to the subject complaint filed by Smt. Suman - Sweeper.

**Exhibit 'W8'** is copy of warning letter bearing reference No.EESA/HK/W/17 dated 20.07.2017 issued from Proprietor, Eagle Eye Security Agency to Raj Kumar - Sweeper, ESI Hospital, Ramdarbar.

**Exhibit 'W9'** is copy of order of termination bearing Reference No.EESA/ESIC/05 dated 29.09.2017 issued by Eagle Eye Security Agency to Raj Kumar whereby his services are dispensed with w.e.f. 30.09.2017.

**Exhibit 'W10'** is copy of aadhar card of workman Raj Kumar.

At the time of recording testimony of AW1 original of Exhibit 'W3' to Exhibit 'W10' were produced which were seen and returned.

12. Workman examined AW2 Balak Ram, S/o Ramu Lal, R/o Small Flats, Dhanas, U.T. Chandigarh, who tendered his affidavit Exhibit 'AW2/A' along with documents i.e. copy of his aadhar card vide Exhibit 'AW2/1' and copy of his identity card showing his date of joining 01.02.2021 valid up to 31.07.2021, designation Housekeeping Boy issued by Mirror Touch Service vide Exhibit 'AW2/2'.

13. On 23.11.2022 the workman closed his evidence.

14. On the other hand, management No.1 & 2 examined MW1 Harish Chander - Office Superintendent, ESI Model Hospital, Industrial Area, Phase - II, Ramdarbar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with attested copies of documents Exhibit 'MW1/1' to Exhibit 'MW1/19'.

**Exhibit 'MW1/1'** is notification dated 24.06.2010.

**Exhibit 'MW1/2'** is agreement dated Nil year 2017.

**Exhibit 'MW1/3'** is acceptance of contract of House-Keeping.

**Exhibit 'MW1/4'** is letter dated 24.06.2017 issued by Deputy Director ESIC Model Hospital Chandigarh to M/s Eagle Eye Security Agency, Panchkula.

**Exhibit 'MW1/5'** is Bill dated 31.07.2017.

**Exhibit 'MW1/6'** is salary sheet for the month of July 2017.

**Exhibit 'MW1/7'** is Bill dated 31.08.2017.

**Exhibit 'MW1/8'** is salary sheet for the month of August 2017.

**Exhibit 'MW1/9'** is Bill dated 30.09.2017.

**Exhibit 'MW1/10'** is salary sheet for the month of September 2017.

**Exhibit 'MW1/11'** is Bill dated 31.10.2017.

**Exhibit 'MW1/12'** is salary sheet for the month of October 2017.

**Exhibit 'MW1/13'** is computer generated sheet for payment of bill dated 11.09.2017 to Eagle Eye Security Agency.

**Exhibit 'MW1/14'** is computer generated sheet for payment of bill dated 01.11.2017 to Eagle Eye Security Agency.

**Exhibit 'MW1/15'** is letter dated 19.07.2017 issued from Suman (Sweeper) to Medical Officer Ram Darbar, Chandigarh.

**Exhibit 'MW1/16'** is letter dated 16.07.2017 addressed from Poonam to Deputy Director, ESIC Model Hospital Chandigarh.

**Exhibit 'MW1/17'** is letter dated 05.09.2017 addressed from Deputy Director ESIC Model Hospital Chandigarh to Eagle Eye Security Agency relating to the subject of complaint against Suman (Sweeper).

**Exhibit 'MW1/18'** is letter dated 29.09.2017 issued on the letter pad of Eagle Eye Security Agency to Raj Kumar.

**Exhibit 'MW1/19'** is authorisation letter dated 14.12.2022 issued by Mr. Vishal Kumar, Asstt. Director, ESIC Model Hospital, Ram Darbar Chandigarh in favour of Shri Harish Chander, Officer Superintendent, ESIC Model Hospital, Ram Darbar Chandigarh.

15. Management No.3 examined MW2 Suman W/o Om Parkash, who tendered her affidavit Exhibit 'MW2/A' along with self-attested copy of her aadhar card vide Exhibit 'MW2/1'. Management No.3 also examined MW3 Randhir Singh - Authorised Representative of M/s Eagle Security Agency, who tendered his affidavit Exhibit 'MW3/A' along with copies of documents Exhibit 'MW3/1' to 'MW3/9'.

**Exhibit 'MW3/1'** is authority letter dated 25.12.2022 in favour of Randhir Singh

**Exhibit 'MW3/2'** is certificate of registration dated 28.10.2020 of M/s Eagle Eye Security Agency.

**Exhibit 'MW3/3'** is award of house-keeping contract dated 24.06.2017.

**Exhibit 'MW3/4'** is appointment letter dated 01.07.2017 in favour of workman.

**Exhibit 'MW3/5'** is complaint dated 19.07.2017 filed by Suman against the workman.

**Exhibit 'MW3/6'** is complaint dated 16.07.2017 filed by Poonam against the workman.

**Exhibit 'MW3/7'** is warning letter dated 20.07.2017 issued by the management No.3 to the workman.

**Exhibit 'MW3/8'** is letter dated 05.09.2017 issued by management No.1 to management No.3.

**Exhibit 'MW3/9'** is termination letter dated 29.09.2017.

16. On 15.09.2023, Learned Representative for management No.1 & 2 and Learned Representative for management No.3 closed oral evidence. On 16.10.2023 Learned Representative for management No.1 & 2 tendered into evidence certified copies of letters dated 07.02.2014, 11.08.2015 and 29.09.2016 issued by Head Quarter Office, ESIC, New Delhi vide Exhibit 'M1' to Exhibit 'M3' respectively. Learned Representative for management No.3 closed documentary evidence on 10.01.2024. Learned Representative for management No.1 & 2 closed documentary evidence on 18.01.2024.

17. I have heard arguments of Learned Representative for the parties and perused the judicial file. My issue-wise findings are as below :-

**Issues No. 1 & 2 :**

18. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

19. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management No.1 & 2.

20. In order to prove its claim workman Raj Kumar stepped into witness box as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not



reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W10'.

21. For corroboration workman examined AW2 Balak Ram, who vide his affidavit Exhibit 'AW2/A' deposed that he is working with the respondents since 2010 in the Housekeeping Section of ESIC Model Hospital, Industrial Area, Phase - II, U.T. Chandigarh. The workers of the above titled respondents formed the union in the year 2016 to stop their rampant exploitation. He (deponent) is Member of the union since its formation i.e. 2016. Copy of his UID card is Exhibit 'AW2/1' and copy of the identity card issued by the respondent/employer is Exhibit 'AW2/2'. AW2 further deposed that the workman Raj Kumar in the present case was elected General Secretary of the union, when his services were terminated. The union took up the cause of exploitation of the workers of the ESIC Hospital with the management and the Labour Department, Union Territory, Chandigarh. Due to the intervention of the Worthy Assistant Labour Commissioner and the efforts of the union and its elected office bearers following relief was given to the workers :-

- (i) The management stopped charging the cost of the working uniform from the workers, which was earlier charged from every worker.
- (ii) The rates of wages were fixed for the payment of earned wages at the DC rates applicable in the Union Territory, Chandigarh.
- (iii) The workers were stopped from working at the residence of the High Officials of ESIC and the Hospital.

AW2 further deposed that these demands were achieved by the workers with the efforts of elected office bearers and Executive Committee of the union, which was not acceptable for the respondent/employers. The respondent/employers hatched a conspiracy to shut out the General Secretary (Raj Kumar) of the union, who was more effective for the raising of workers demands. The complaints raised by co-worker against Raj Kumar were managed by the respondent/employer, hence no inquiry was conducted against Raj Kumar, the workman.

22. On the other hand, management No.1 & 2 has denied the relationship of employer & employee between management No.1 & 2 and the workman. To prove its plea management No.1 & 2 examined MW1 Harish Chander, Office Superintendent of ESIC Model Hospital, Industrial Area, Phase - I, Ramdarbar, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed that he is authorised signatory of ESIC Hospital and is well conversant with the facts of the present case and competent to swear this affidavit through notification Exhibit 'MW1/1'. In the remaining portion of his affidavit MW1 has deposed the entire contents of the written reply filed by management No.1 & 2 jointly which are not reproduced here in order to avoid repetition. MW1 supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/19'. Learned Representative for management No.1 & 2 referred letters Exhibit 'M1' to Exhibit 'M3', which relates to contractual arrangements for various services in ESIC Hospital and Directorate (Medical), Delhi to engage Group 'C' & 'D' staff.

23. Management No.3 has taken the plea that services of the workman are terminated on the repeated complaints against his conduct i.e. causing harassment to the lady colleagues. Before terminating the services of the workman, he was issued warning letter but the workman did not mend his behaviour. To support its plea management No.3 examined MW2 Suman, who vide her affidavit Exhibit 'MW2/A' deposed that she is working as Housekeeping Staff in ESI Hospital, Industrial Area, Phase - I, Ramdarbar, Chandigarh and her aadhar card is Exhibit 'MW2/1'. MW2 further deposed that claimant Raj Kumar was also working in ESI Hospital, Industrial Area, Phase - I, Ramdarbar, Chandigarh on contract basis as Housekeeping Staff. In July, 2017, she made a complaint to Medical Officer of ESI Hospital against Raj Kumar and Chandan Kumar due to mental and physical harassment caused to her. Raj Kumar along with Chandan Kumar used to pass vulgar comments and show inappropriate gestures to her and abuse her. Raj Kumar and Chandan Kumar also instigated her husband while giving false statement about her character and used to spread rumour about her character to co-

workers and her husband. The conduct and action of Raj Kumar and Chandan Kumar caused a great mental harassment and disturbed her family life also. Initially she made oral complaints to Randhir Singh - Manager of Eagle Eye Security Agency about Raj Kumar and Chandan Kumar on various occasion. Thereafter she made written complaint against Raj Kumar and Chandan Kumar to Medical Officer ESI, Hospital and copy of the same was given to the Randhir Singh also. Copy of complaint dated 19.07.2017 is Exhibit 'MW1/15'. On her complaint Randhir Singh - Manager of Eagle Eye Security Agency made them to sit and enquired about the facts of the facts and assured her for taking action against Chandan Kumar and Raj Kumar.

24. Management No.3 examined MW3 Randhir Singh, who vide his affidavit Exhibit 'MW3/A' deposed that he is authorised representative of M/s Eagle Security Agency, Booth No.433, Behind Petrol Pump, Sector 8, Panchkula vide authorization letter dated 25.12.2022 / Exhibit 'MW3/1'. He is well conversant with the facts of the present case and has been an active witness to all acts during the service tenure of the workman Raj Kumar. The copy of award of contract for housekeeping working ESIC Model Hospital, Chandigarh given to respondent No.3 is Exhibit 'MW3/3' vide letter No.172-D/34/15/01/15/ESI-H-CHD dated 24.06.2017 for one year w.e.f. 01.07.2017 and further extended till 31.01.2021. In his remaining version MW3 deposed all the material contents of the written reply filed by management No.3, the same are not reproduced here in order to avoid repetition. MW3 supported his oral version with documents Exhibit 'MW3/1' to Exhibit 'MW3/9'.

25. From the oral as well as documentary evidence led by the parties, it comes out that the workman was deployed as Housekeeping staff in ESI Hospital, Industrial Area, Phase - II, Chandigarh through contractor. The workman has alleged that he joined the services w.e.f. 18.10.2010 and worked continuously till 30.09.2017 whereas management No.1 & 2 denied the fact that the workman joined the services of the answering managements w.e.f. 18.10.2010 and also denied the fact that the workman worked continuously without any interruption and break in the services till 30.09.2017. Management No.3 has denied the fact as wrong that the workman joined services w.e.f. 18.10.2010 and worked continuously till 30.09.2017. In the present case, the workman has not placed on record copy of his appointment letter showing his date of joining on contractual basis with management No.1 & 2. It is own case of the workman that from the date of joining till 31.03.2011, M/s Golden Eagle Security Company was his contractor. Thereafter, another contractor M/s Eagle Eye Security Agency took over the charge from 01.04.2011 and remained till 30.04.2016. Thereafter, another contractor M/s Pawan Bajaj took over the charge w.e.f. 01.05.2016 and left the charge on 30.06.2017. Thereafter M/s Eagle Eye Security Agency took charge w.e.f. 01.07.2017. Management No.1 & 2 has simply denied the aforesaid plea of the workman as wrong. There is no specific denial of management No.1 & 2 that they did not engage the workman through contractor w.e.f. 18.10.2010 and that they never entered into any agreement of employment on contractual basis with various contractors from year 2010. Management No.3 has produced the record of contract with management No.3 for the period w.e.f. 01.07.2017 to 30.06.2018. Management No.3 is silent about the record of the contractor previous to 01.07.2017. MW1 Harish Chander (witness of management No.1 & 2) when put to cross-examination stated that he does not know if workman Raj Kumar is serving in ESI Model Hospital continuously from 18.10.2010. The denial of fact for want of knowledge is not a specific denial. Under the law the fact, which is not specifically denied is deemed to be admitted. MW3 Randhir Singh (witness of Management No.3) when put to cross-examination by the workman admitted as correct that at the time of beginning of contract with M/s Eagle Eye Security Agency, the contractual employee of previous contractor were taken over and at the time of termination of the contractor with M/s Eagle Eye Security Agency, the contractual employees working at that time were taken over by the next contractor. From above referred version of MW1 and MW3, the workman is proved to be in service of management No.1 & 2 through contractor w.e.f. 18.10.2010, although there is no direct relationship of employer & employee between management No.1 & 2 and the workman. It is not the case of the workman that he has received any wages directly from management No.1 & 2 or that he was appointed by the management No.1 & 2 or that the order of termination of services was passed by management No.1 & 2.

26. The fact remained undisputed between the parties that at the time of termination of services of the workman, management No.3 was the contractor. In this regard, MW3 Randhir Singh - Authorised Representative of M/s Eagle Eye Security Agency / management No.3 when put to cross-examination by management No.1 & 2 admitted as correct that the management No.3 has executed contractual agreement / Exhibit 'MW1/2' with the management No.2 for providing House-Keeping Services in ESIC Hospital for one year and under this agreement management No.3 has deployed the workmen including the workman. The said contractual agreement was extended from time to time up to 31.01.2021. MW3 admitted as correct that the management No.3 has received the payments as per DC Rates towards wages of workmen. The bills of payment are already exhibited as Exhibit 'MW1/5' to Exhibit 'MW1/14'. MW3 admitted as correct that the complaint received from Suman / Exhibit 'MW1/15' and another complaint received from Poonam / Exhibit 'MW1/16' both against the workman were forwarded with the letter dated 05.09.2017 by the management No.2 to the management No.3 to take decision on their own level. MW3 admitted as correct that the said complaints / Exhibit 'MW1/15' and Exhibit 'MW1/16' were decided by the management No.3. MW3 when put to cross-examination by the workman admitted as correct that the services of the workman were terminated w.e.f. 22.09.2017 vide Exhibit 'W9'. From the aforesaid version of MW3 it is duly proved on record that lastly the workman was deployed by M/s Eagle Eye Security Agency / management No.3 as contractual employee with management No.2 for providing housekeeping services in ESIC hospital and it is management No.3 which has terminated the services of the workman vide order Exhibit 'W9'.

27. Learned Representative for the workman contended that the order of termination of services / Exhibit 'W9' is illegal being passed without holding any kind of inquiry proceedings. Since the workman has completed continue service of more than 240 days in 12 calendar months preceding his termination (termination w.e.f. 29.09.2017), thus the workman fulfills the requirement of Section 25B of the ID Act and his services cannot be terminated without compliance of conditions laid down in Section 25F of the ID Act. To support his contention Learned Representative for the workman referred cross-examination of MW3 wherein he has stated that no inquiry proceeding in writing were conducted before issuing warning letter dated 20.07.2017 / Exhibit 'MW3/7'. MW3 in his cross-examination further admitted as correct that no inquiry in writing was conducted either by Director of ESIC Hospital or contractor before terminating the services of the workman. MW3 voluntarily stated that the verbal inquiry was conducted.

28. On the other hand, Learned Representative management No.1 & 2 contended that the workman that the workman is contractual employee lastly deployed through contractor / management No.3. The order of termination Exhibit 'W9' is also passed by contractor / management No.3. Thus, management No.1 & 2 has no concern with the termination order.

29. Learned Representative for management No.3 contended that before issuing the order of termination / Exhibit 'W9', there were various complaints against the conduct of the workman. One of the complaint Exhibit 'MW1/15' is proved into evidence by MW2 Suman (complainant). After verbal inquiry the workman was issued warning letter Exhibit 'MW3/7' whereby he was warned for the misbehaviour with complainant Suman and further warned that if he repeat same act in future, his services will be terminated. But the workman did not mend his behaviour and conduct. Moreover, the employer / management No.3 while terminating the services of the workman has acted as per condition No.4 of appointment letter Exhibit 'MW3/4' which reads as below :-

*"4. Smooth Functioning of Hospital is very important and you understand that your joining to any union or Anti-Social activities will be against Smooth Functioning of Hospital and Security Agency have full right to terminate your services."*

30. It is further contended by Learned Representative for management No.3 verbal inquiry is sufficient to terminate the services of the workman. To support his contention Learned Representative for management No.3 referred **judgment dated 08.12.2021** of Hon'ble Supreme Court passed in **Civil Appeal No.7536 of 2021 (arising out of SLP (Civil) No.12369 of 2021)** titled as **Uttar Pradesh State Road Transport Corporation Versus Gajadhar Nath**.

31. To my opinion, it is un-denialable fact of the managements that the workman has completed continuous service of more than 240 days in 12 calendar months preceding termination of his services as required under Section 25B of the ID Act. Once the requirement of Section 25B of the ID Act is fulfilled, the provision of Section 25F stands attracted, which lays down certain conditions precedent to terminate the services of workman. In the present case, before issuing the order of termination Exhibit 'W9', co-workers Suman and Poonam lodged complaint against the workman and Chandan Kumar. In the present case, complainant Poonam has not stepped into the witness box. Complainant Suman / MW2 during her testimony alleged that Raj Kumar along with Chandan Kumar used to pass vulgar comments and show inappropriate gestures to her and abuse her. MW2 has brought into evidence copy of written complaint dated 19.07.2017 vide Exhibit 'MW1/15' / Exhibit 'MW3/5'. Bare perusal of Exhibit 'MW1/15' / Exhibit 'MW3/5' would show that there is no allegation of passing any vulgar comments, showing of any inappropriate gestures and abusing her. The aforesaid version of MW2 being improved version is not admissible into evidence. For better appreciation the translated version of Exhibit 'MW1/15' from Hindi to English language is as below :-

*"It is requested that I (Suman) is working at the post of Sweeper in your hospital. I had been working here through contractor from last 15 years. In my staff Chandan and Raju are Housekeeping employees. I have been subjected to mental harassment. Due to which there remain dispute at my home. Both of them level false allegations against my character. My husband Om Parkash is also working in this hospital as Sweeper. They instigate him by uttering wrong information. In case anything happens to me in future, then these people will be responsible. Attention may kindly be paid to the matter. I shall be obliged.*

32. On the basis of aforesaid complaint, management No.2 vide letter dated 05.09.2017 Exhibit 'MW1/7' / Exhibit 'MW3/8', forwarded the matter for doing the needful at own level to the management No.3. In pursuance of the same the management No.3 warning letter dated 20.07.2017 / Exhibit 'MW3/7' to workman. As per the contents of the warning letters Exhibit 'MW3/7', the workman was warned not to repeat any such act in future; otherwise he will be terminated from service. It is not the case of management No.3 that it has received any other complaint against the conduct of the workman subsequent to warning letter dated 20.07.2017 / Exhibit 'MW3/7'. The services of the workman were terminated vide letter dated 20.09.2017 / Exhibit 'W9' w.e.f. 30.09.2017. The order of termination finds reference of letter dated 11.09.2017 relating to the action sought by management No.2 with regard to complaint of Suman. The copy of letter dated 11.09.2017 is stated to be enclosed with the order of termination but no such letter dated 11.09.2017 is produced on record by any of the managements.

33. The condition No.4 incorporated in appointment Exhibit 'MW3/4' is contrary to the conditions laid down in Section 25F of the ID Act. The management No.3 cannot dispense with the services of the workman without compliance of Section 25F of the ID Act by inserting any contrary clause or condition in the appointment letter. It is not the case of management No.3 that before issuing the order of termination / Exhibit 'W9' it has either issued one month prior notice or paid notice pay in lieu of notice period or paid retrenchment compensation. It is admitted by MW3 (witness of management No.3) that no written inquiry was conducted before terminating the services of the workman. The judgment of Hon'ble Supreme Court in **Civil Appeal No.7536 of 2021 (supra)** referred by Learned Representative for management No.3 is not applicable to the facts of the present case. It is undeniable fact of management No.3 that the services of the workman have been terminated on account of the allegations against his conduct on the basis of complaint moved by co-worker Suman. Therefore, termination order Exhibit 'W9' is stigmatic. The judgment referred by Learned Representative for the workman reported in **2023 Lab. IC 4508 Karnataka** titled as **Chief Officer, Chamarajanagar Versus Government**



*of Karnataka Bangalore* is applicable to the facts of the present case. The relevant para 2 & 3 of the judgment are reproduced as below :-

- "2. *Having heard the learned counsel appearing for the parties and having perused the Appeal Papers, we decline indulgence in the matter inasmuch as regardless of the status of an employee, no stigmatic dismissal order can be passed without holding a minimum inquiry, more particularly when allegations are denied by him. A look at the order of dismissal makes it abundantly clear that the same is heavily stigmatic of the employee concerned. The wild allegations are that he with a malafide intent has destroyed the recorded footage relating to election to the post of President of the Panchayat and that he has betrayed the trust.*
3. *Dismissing a person from service, whether his engagement is on regular basis or on contract basis, has serious consequences not only on his livelihood but also reputation which is a precondition for other employment. In our system, the principles of natural justice are treated as part of Article 14 vide Cantonment Board v. Taramani Devi, AIR 1995 SC 61. Therefore, no person can be condemned unheard. In Biblical literature, even God is said to have given an opportunity of hearing to Adam and Eve before punishing them for eating the forbidden fruit in the Eden garden. That being the sanctity of audi alteram partem principle, the learned single Judge has rightly set at naught the dismissal order of the employee. He has done justice to both the sides inasmuch as he has treated the period of dismissal as dies non and thereby, denied arrears of wages. Added, liberty is also reserved for holding inquiry if the employer so desires. The impugned order thus has brought about a just result, regardless of arguable lacunae therein. Such orders do not merit challenge."*

34. The workman has failed to controvert the fact that the contract of management No.1 & 2 with management No.3 has already expired. In this regard MW3 when put to cross-examination by the workman stated that their initial contract with ESIC Hospital was renewed from time to time which ended in January 2021. At the time of completion of contract period M/s Eagle Eye Security Agency did not pay any compensation to any of its contractual worker. In view of the reasons recorded above, the order of termination dated 20.09.2017 / Exhibit 'W9' being contrary to Section 25F of the ID Act is illegal and is hereby set aside. The workman is entitled to retrenchment compensation in tune of ₹ 60,000/- to be recovered from management No.3.

35. Accordingly, issue No.1 is decided in favour of the workman and against the management No.3. Issue No.2 is decided in favour of managements No.1 & 2 and against the workman.

**Relief :**

36. In the view of foregoing finding on the issues above, this industrial dispute is allowed to the effect that order of termination dated 20.09.2017 / Exhibit 'W9' being contrary to Section 25F of the ID Act is illegal and is hereby set aside. The workman is held entitled to retrenchment compensation in tune of ₹ 60,000/- to be recovered from management No.3. Management No.3 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the above said amount from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 18.01.2024.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT**Notification**

The 18th March, 2024

**No. 13/2/89-HII(2)-2024/4486.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **82/2021** dated **14.12.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAM KISHAN MISHRA, S/O SH. JAWALA PARSHAD, H.NO.532, SINGHA DEVI COLONY, EKTA VIHAR, NAYAGAON, DISTRICT MOHALI. (Workman)

AND

1. M/S CHECKMATE SERVICE PVT. LTD., SCF NO. 128, PHASE-3-B2, DISTRICT MOHALI THROUGH ITS MANAGING DIRECTOR.
2. AXIS BANK LTD., AXIS BANK CURRENCY CHEST, SECTOR 34, CHANDIGARH THROUGH ITS BRANCH MANAGER (Management)

**AWARD**

1. Ram Kishan Mishra, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 12.03.2018 the claimant-workman was appointed by management No.1 i.e. M/s Checkmate Services Pvt. Ltd., Mohali as Cash Sorter. The claimant-workman was deployed at the workplace of management No.2 i.e. Axis Bank Ltd., Axis Bank Currency Chest, Sector 34, Chandigarh. The claimant-workman remained there in the continuous employment up to 11.02.2021 when his services were illegally & wrongfully terminated by refusing of work. The claimant-workman was drawing ₹ 17,000/- per month as wages at the time of termination. On 12.02.2021 the claimant-workman went to attend his normal duty but he was refused work by management No.2 on the pretext that the management No.1 has asked them to refuse work to the worker. No reason of refusal of work was given to the claimant-workman by both the managements. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management No.1 has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement the claimant-workman served upon the management a demand notice dated 15.02.2021. The management neither denied the contents of the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. Management No.1 appeared before the Conciliation Officer, U.T. Chandigarh one time only and thereafter he did not appear before the conciliation on any date fixed for settlement. The termination is illegal, wrongful, motivated against the principles of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the claimant-workman be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice, management No.1 contested the claim statement by filing written reply dated 12.11.2022 (filed on 06.12.2022) wherein it is stated that the date of commencement is correct but the answering management did not terminate any employee. It is denied as incorrect that both these managements refused work to the claimant-workman. Since no termination was done, thus retrenchment benefits, charge sheet, inquiry to be held before termination etc. are not applicable. The employees collectively absented and refused to come to work, the matter was taken up with disciplinary action, Checkmate Security Services have made sufficient representation at Labour Department. The applicant's plea that action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice is

not acceptable. The claimant-workman's plea of demanding reinstatement with back wages, continuity of service and without any change in service condition etc. is not acceptable. No such intentions and acts were initiated by employer but all outstanding efforts were made to get the employee to work as the company had to face huge losses.

4. Management No.2 contested the claim statement by filing separate written statement dated 01.11.2022 (filed on 01.11.2022) wherein preliminary objection is taken on the ground that the claim statement is not legally maintainable as there is privity of contract between claimant-workman and the answering management and the claimant-workman was never hired by the answering management.

5. On merits, it is denied for want of knowledge that on 12.03.2018 the claimant-workman was appointed as Cash Sorter by management No.1. The answering management had hired the services of management No.1 but appointment and termination of any worker was the sole discretion of management No.1 and the answering management has no role to play in it. The alleged the claimant-workman was not on the roll of bank nor employee of the bank nor even any salary was paid to him by the answering management. No refusal as alleged by the claimant-workman was conveyed by the officials of the answering management. No alleged demand notice was ever served upon the answering management and also no notice was received by the answering management from the office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The claimant-workman never remained employee or worker of the answering management. Rest of the averments of the claim statement are denied being incorrect and prayer is made that claim statement may be dismissed with cost.

6. The claimant-workman filed rejoinder to the written statement of management No.1 on 17.01.2023 wherein contents of the written statement except admitted facts are denied and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 was not filed.

7. From the pleadings of the parties, following issues were framed vide order dated 20.03.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits as prayed for ? OPW
3. Whether the claim statement qua management No.2 is not maintainable? OPM (management No.2)
4. Relief.

8. In evidence, claimant-workman Ram Kishan Mishra examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 08.09.2023 Learned Representative for the claimant-workman closed the evidence in affirmative.

9. On the other hand, management No.2 examined MW1 Amit Rajpal - Senior Manager, Axis Bank, Sector 34, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'.

10. Management No.1 examined MW2 Jaspal Singh - DGM (Banking) of M/s Checkmate Services Pvt. Ltd., Phase 3B-II, SAS Nagar Mohali, who tendered into evidence his affidavit vide Exhibit 'MW2/A' along with notary attested copies of documents Exhibit 'MW2/1' to Exhibit 'MW2/6'.

**Exhibit 'MW2/1'** is authority letter dated 28.03.2019 in Jaspal Singh issued by the Managing Director & Company Secretary of management No.1.

**Exhibit 'MW2/2'** is aadhar card of Jaspal Singh.

**Exhibit MW2/3'** is warning letter dated 12.02.2021 issued to the workman by the authorised signatory of management No.1 through courier.

**Exhibit 'MW2/3-A'** is original receipt of DTDC Courier Agencies.

**Exhibit 'MW2/4'** is absenteeism letter dated 18.02.2021 for not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/4-A'** is original postal receipt dated 20.02.2021.

**Exhibit 'MW2/5'** is letter dated 17.03.2021 for final intimation on not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/5-A'** is original postal receipt dated 19.03.2021.

**Exhibit 'MW2/6'** is original undelivered registered letter accompanied with acknowledgment bearing postal endorsement 'now known and returned to sender'.

11. On 16.11.2023 Learned Representative for management No.2 closed the evidence on behalf of management No.2. On 06.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed oral evidence. On 14.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed documentary evidence.

12. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

**Issue No.1 to 3 :**

13. Onus to prove issue No.1 & 2 is on the workman and onus to prove issue No.3 is on management No.2.

14. Under these issues claimant-workman Ram Kishan Mishra examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity.

15. Management No.1 has examined MW2 Jaspal Singh - DGM (Banking), who vide his affidavit Exhibit 'MW2/A' deposed that he is working with management No.1 as Deputy General Manager (Banking) with Employee Code EMP/COR006558, Office at SCF 128, Phase 3B-II, SAS Nagar, Mohali from 06.05.2014 and he is personally aware of the facts of this case. Management No.1 is a company registered as per the provisions of the Company's Act, 1956. Management No.1 is engaged in business of providing security services, cash sorter services across the India to its customers on the basis of requirement and as per contract terms and agreement. Contrary to the workman's claim of illegal termination, he submits that the employment of the claimant-workman was not terminated. Due to exigency of work in the other location of management No.1, he as DGM (Banking) transferred the following four employees to their Ahmedabad office as per company's requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

These employees were transferred to their Ahmedabad office. They were given transfer letters given by hand to report to Checkmate, Ahmedabad Office under his instructions (as per company's requirement) on 11.02.2021 sent through Indian post RPAD. These letters were given in person which they refused to accept. They were briefed regarding the transfer, which they refused to accept, return letter with remarks of refusal. The transfer letters were displayed on the notice board of the Axis Bank on same day i.e. on 11.02.2021. On 12.02.2021, he was on leave and was attending function at his home town, when he received a call from Mr. Ritesh Kumar - Branch Manager, Axis Bank, stating that no employee of Checkmate Services had reported for duty and when they and he had tried to contact their employee, they were absent. The claimant-workman stated that they will not come to work and all were not willing to come for duty any more. He informed about the mass absenteeism by the claimant-workman and repeated calls were received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employee who have not come on duty, the bank will not accept such un-authorised absence from their staff as bank work stuck up due to cash sorter not reporting for duty. He kept on calling absentee employees from his phone but his phone was not picked by any of the absent employees for the next 2 days i.e. 12.02.2021 to 14.02.2021. On



resuming his office on 15.02.2021, he himself again tried to contact the absconding employees, only Mr. Ravi Kumar, EMP/CHD05592 and Mr. Pankaj Kataria, EMP/CHD/03936 picked the call and agreed to come to Mohali Office SCF 128, Phase 3B-II, SAS Nagar Mohali. On next day i.e. 16.02.2021 he himself tried to convince both the absconded employees to resume their duties as the bank officials were putting lot of pressure and the work stoppage had very negative impact on the bank services and their reputation and high penalty clause in the agreement. Both the employees Mr. Ravi Kumar and Mr. Pankaj Kataria were ready to understand and joined the duties but stated that other fellow employees had threatened them not to join the duty. Meanwhile they have appointed new staff in place of absconded employees to fill the bank requirement and their repetition as service provider as well to avoid high penalty of non-providing contractual staff as per agreement. Also they have approached the absconded staff to join duty at the other place. They have requirement at Ahemdabad, for that they had sent the letter through RP/AD post letter dated 11.02.2021 as well sent the absenteeism letters-cum-not reporting on duty letter on 18.02.2021 and final letter on 17.03.2021 to the claimant-workman to join duty as his services has not been terminated nor any violation of his appointment services conditions. He asserts that the management has never terminated the services of the claimant-workman. On the contrary the management has provided multiple opportunities to the claimant-workman to re-join duty even after a mass absconding incident incurred. The claimant-workman however failed to respond or re-join and instead engaged in mass absconding without any prior intimation. This action appears to be an attempt to harass both the managements to coercive tactics by the claimant-workman. The management remains willing to offer employment as there has been no formal termination of services. Consequently, there is no basis for claims related to back wages or any other form of compensation, given that the service has not been terminated. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/6'.

16. The management No.2 examined MW1 Amit Raj Pal - Senior Manager, Axis Bank, who vide his affidavit Exhibit 'MW1/A' wherein he deposed that the present alleged claim filed by the claimant against management No.2 is legally maintainable as there is no privity of contract between claimant and management No.2 and the claimant was never hired by management No.2. Management No.2 had hired the services of management No.1 but the appointment and termination of any worker was the sole discretion of management No.1. Management No.2 had no role to play in it. The alleged claimant was not on the roll of the bank, nor employee of the bank nor even any salary was paid to him by management No.2. No notice as alleged was ever served upon management No.2 and also no notice was received by management No.2 from the office of Additional Labour Commissioner-cum-Conciliation officer, U.T. Chandigarh. The claimant never remained employee or worker of management No.2.

17. From the oral as well as documentary evidence led by the parties it comes out that undisputedly the claimant-workman was appointed on 12.03.2018 as Cash Sorter by management No.1 and was deployed at the work place of management No.2. In this regard, AW1 when to put to cross-examination by management No.2 stated that Axis Bank / management No.2 did not issue him any appointment letter and termination letter / order. He was deployed with the Axis Bank / management No.2 by M/s Checkmate i.e. management No.1. MW1 (witness of management No.2) when to put to cross-examination by the workman admitted as correct that the Axis Bank has contract with the Checkmate Services for providing the manpower. MW1 admitted as correct that the Checkmate Services provided about 15 workers including the claimant of the present case for deployment with Chandigarh Branch of Axis Bank. MW1 stated that bank was not maintaining the attendance of contractual workers. The supervisor of Checkmate was maintaining their attendance. The bank had not been supervising the disbursement of wages and provident fund etc. of the contractual workers. MW2 Jaspal Singh (witness of management No.1) when to put cross-examination by the workman stated that the agreement of management No.1 with the Axis Bank Ltd. / management No.2 was at central level and there was no local agreement. Under the said agreement, management No.1 provided 18 workers to management No.2 around year 2016. From the above-mentioned version of AW1, MW1 and MW2 it is duly established on record that management No.1 i.e. M/s Checkmate Services Pvt. Ltd. is service provider, who under the contract has provided security services and Cash Sorter services to management No.2 i.e. Axis Bank, Sector 34, Chandigarh and the claimant-workman was deployed by the management No.1 at the work place of management No.2 as a Cash Sorter. Since management No.1 maintained the record of attendance and supervision of work of claimant-workman through its Supervisor, thus

the claimant-workman was under the direct employment of management No.1 and was a contractual worker deployed with management No.2. There is no direct relationship of employer-employee between management No.2 and claimant-workman. Since management No.2 has hired the services of claimant-workman from its service provider i.e. management No.1, therefore, management No.2 was necessary party, being principal employer, and the claim qua management No.2 is duly maintainable.

18. Admittedly, the authority to appoint, transfer and terminate the contractual employee (herein claimant-workman) was with the service provider i.e. management No.1. Learned Representative for the claimant-workman argued that the claimant-workman remained in continuous employment of the management No.1 from the date of appointment i.e. 12.03.2018 up to 11.02.2021, thus completed 240 days of continuous service in 12 calendar months preceding termination of his services (service being verbally terminated on 12.02.2021). The claimant-workman has alleged that his last drawn wages were ₹17,000/- per month. In this regard MW2 (witness of management No.1) was put to cross-examination by workman stated that there is no dispute with regard to the date of appointment, amount of monthly salary and the date of dispensing with of their services. MW2 further stated that all the workers including the workman had continuously worked for more than 240 days in 12 calendar months preceding their absence from duty.

19. Management No.1 has taken the plea that 15 contractual workers were deployed with management No.2. On 11.02.2021, out of 15 contractual workers, 4 workers namely Ravinder, Joginder Pal, Suresh Kumar and Ajay Kumar were transferred to Ahmedabad. 4 workers who were transferred refused to accept the transfer letter and refused to join at Ahmedabad. The transfer-cum-movement order was also affixed on the notice board of management No.2 i.e. Axis Bank Limited. In order to put pressure upon the management No.1 to cancel the transfer order of four employees all 15 contractual workers collectively absented from duty w.e.f. 12.02.2021. After extensive follow-ups, 2 workers returned to duty with the same employment terms & conditions whereas the remaining 13 including the workman of the present case did not resume duty. It is further argued by Learned Representative for management No.1 that M/s Checkmate Service Pvt. Ltd. has not terminated the service of any of the workman in any manner. Management No.1 has followed due procedure issuing absenteeism letters and reminders, emphasising the company's intent for workman to resume duty but he refused to receive. Management No.1 also issued warning letter dated 12.02.2021 / Exhibit 'MW2/3' through courier vide receipt Exhibit 'MW2/3A', issued another absenteeism letter dated 18.02.2021 / Exhibit 'MW2/4' vide postal receipt Exhibit 'MW2/4A' and final intimation for not reporting on duty vide letter dated 17.03.2021 Exhibit 'MW2/5' through registered post vide Exhibit 'MW2/5A'. Despite issuance of various letters, the claimant-workman did not join back the duty, thus, the claimant-workman himself abandoned the job, though his services were never terminated by management No.1. The workman failed to report to his duty at the work place without any prior notice or explanation which is a clear violation of company's policy and established work expectations. The employer has the inherent right to manage its work force including making decisions regarding re-location. Management No.1 has acted in accordance with its established policies and procedures which were communicated to all the employees by all means to join duty.

20. On the other hand, Learned Representative for the workman contended that no letter / letters as alleged by management No.1 were ever received by the claimant-workman. There is nothing on record to show that the letters allegedly issued through courier or registered post were actually delivered to the claimant-workman. In the present case, there is no dispute with regard to the date of appointment, date of dispensing with the services and monthly salary of the workman. As proved from the cross-examination of MW2 Jaspal Singh (witness of management No.1), the workman had continuously worked for more than 240 days in 12 calendar months preceding his alleged absence from duty, the claimant-workman fulfills the requirement of continuous service as defined in Section 25-B of the ID Act. Once the workman is covered under Section 25-B of the ID Act, then the provision of Section 25-F stands attracted. For better appreciation Section 25-F of the ID Act is reproduced as below :-

*"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-*

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

21. Section 25-F of the ID Act lays down certain conditions which are precedent to retrenchment of workman. In the present case, the management No.1 has taken the plea that the claimant-workman absented from duty w.e.f. 12.02.2021 in protest to the transfer order of co-workers from Chandigarh to Ahmedabad. Moreover, the plea taken by the management No.1 during its evidence that the workman absented in protest to transfer order of the co-worker and to pressurize the management No.1 to withdraw the transfer order of the co-workers is beyond pleadings. The written statement finds no reference of any alleged transfer order of any of the workmen deployed with the Axis Bank. In this regard MW2 Jaspal Singh in his cross-examination stated that in written reply filed by management No.1 to the claim statement, it is nowhere mentioned that the worker was transferred from Chandigarh to some other place. Besides, the management has failed to prove into evidence the transfer order of the co-workers. The contention raised by Learned Representative for the claimant-workman that no letter allegedly issued by the management No.1 was served to the workman, carries force as MW2 (witness of management No.1) when put to cross-examination by workman stated in his statement recorded on 30.11.2023 that some of the letters were issued through courier and some through speed post to the workers. First warning letter was issued through courier to all absentee workers. No delivery report of courier was received from the concerned courier agency. In the claim statement address of the claimant-workman is mentioned as House No.532, Singha Devi Colony, Ekta Vihar, Nayagaon, Distt. Mohali whereas the letters Exhibits 'MW2/6' is issued to the claimant workman on different address i.e. Snatan Dharm Mandir, Sector 23, Chandigarh is received back undelivered with the postal endorsement 'Left / Returned to Sender'. Management No.1 in cross-examination of claimant-workman / AW1 did not put his postal / correspondence address to him. Therefore, oral version of MW2 (his voluntary statement) in his cross-examination recorded on 06.12.2023 that the letters were issued to the workman as per his address available on record is insufficient to assume the delivery of letters. The management No.1 did not produce their office record into evidence showing the local address of the claimant-workman.

22. MW2 Jaspal Singh in his cross-examination (recorded on 30.11.2023) denied the suggestion as wrong that vide letter dated 17.03.2021 / Exhibit 'MW2/5' the services of the workman were terminated. To my opinion, the denial on part of MW2 that the management did not intend to terminate the services of the workman by issuing letter dated 17.03.2021 / Exhibit 'MW2/5' is not acceptable because in his cross-examination MW2 admitted as correct that vide letter Exhibit 'MW2/5' the workman was directed to complete his clearance formalities for full & final settlement. The aforesaid admission on part of MW2 would suggest that the management No.1 intended to effect full & final settlement with the workman, which can be done only when the workman is relieved from service and not during continuity of his service.

23. MW2 in para 4 of his affidavit Exhibit 'MW2/A' deposed that due to exigency of work in other locations of respondent No.1 requirement, he as the DGM Banking, transferred the following employees to their Ahmedabad office as per company requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

24. In the present case, first of all the aforesaid plea taken by MW2 in his examination-in-chief by way of affidavit Exhibit 'MW2/A' is beyond pleadings. Secondly, MW2 in para 7 of his affidavit Exhibit 'MW2/A' deposed that he informed about the mass absenteeism by the applicant and repeated calls received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employees, who are not coming on duty, the bank will not accept such un-authorised absence from their staff, as Bank work was stuck up due to Cash Sorter not reporting for duty. The aforesaid version of MW2 is also beyond pleadings. Besides Axis Bank / management No.2 in its written statement / reply nowhere mentioned that Mr. Ritesh - Branch Manager, Axis Bank telephonically informed the management No.1 about any un-authorised absence of the workman from duty. Management No.1 and 2 did not examine Mr. Ritesh - Branch Manager in their evidence. Moreover, there is no documentary evidence on record to show the company's requirement at Ahmedabad office of management No.1.

25. If for the sake of arguments, it is assumed that the claimant-workman absented from duty w.e.f. 12.02.2021, then also at the most it amounts to misconduct and since the workman fulfills the requirement of Section 25-B of the ID Act, thus management No.1 was bound to comply with the conditions incorporated in Section 25-F of the ID Act. But management No.1 has failed to comply with mandatory conditions as laid down in Section 25-F of the ID Act. In this regard, MW2 when put to cross-examination by the workman stated that no charge sheet was served to the workman for his alleged absence from duty. Neither any preliminary inquiry nor any regular domestic inquiry was conducted against the workman. No retrenchment compensation was paid to the worker. From the aforesaid version of MW2, it is established that management No.1 has violated the provisions of Section 25-F of the ID Act. The judgment referred by Learned Representative for the workman reported in **2014(11) SCC 85** titled as **Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited** is applicable to the facts of the present case to an extent. The relevant portion of the judgment is reproduced as below :-

*"Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, 2010(3) S.C.T. 319 : 2010(5) SCC 497 as under :-*

*13.... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 Supreme Court 610, Bombay Union of Journalists v. State of Bombay, (1964) 6 SCR 22, State Bank of India v. N. Sundara Money, (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala, (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 255, L. Robert D'Souza v. Executive Engineer, Southern Railway, (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, (1980) 4 SCC 443, Gammon India Ltd. V. Niranjana Das, (1984) 1 SCC 509, Gurmail Singh v. State of Punjab, 1991(3) S.C.T. 608 : (1991) 1 SCC 189 and Pramod Jha v. State of Bihar, 2003(2) S.C.T. 296 : (2003) 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and*



*sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his services was not terminated."*

26. MW2 Jaspal Singh, witness of Management No.1 / service provider during his cross-examination expressed his readiness to re-join the worker but refused to give him the benefit of continuity of service and back wages. In this regard, MW2 when put to cross-examination by the workman stated that we are ready to take in service absentee workers as per availability of vacancy at Chandigarh and nearby stations such as Ludhiana, Jalandhar and Panchkula. MW2 further stated that they are not ready to re-join the workers with continuity of service. They are also not ready to pay back wages for the period of their absence from duty. MW2 denied the suggestion as wrong that re-joining of a workman without continuity of service amounts to fresh appointment. To my opinion, the conditional offer of management No.1 / service provider to re-join the workman as per availability of the vacancy and without the benefits of continuity of service & back wages is unjustified because as discussed above, in this case, the termination of services of the workman is held illegal being in violation to Section 25-F of the ID Act. In case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule. The workman is entitled to the relief of reinstatement with continuity of service under the same terms & conditions as existed before his termination.

27. As far as back wages are concerned, the claimant-workman has alleged that he remained unemployed during the period from the date of termination till date. On the other hand, none of the managements have taken plea of gainful employment in their respective written statements. However, it is argued by Learned Representative for management No.1 that as per the judgment of Hon'ble Supreme Court in **Civil Appeal No. 5390 of 2019 decided on 11th July 2019** tilted as **Chief Regional Manager, United India Insurance Company Limited United India Insurance Company Limited Versus Siraj Uddin Khan**; the principle of 'no work, no pay' applies. In case, the workman is to be reinstated he is not entitled to back wages. To my opinion, the judgment referred (*supra*) by Learned Representative for management No.1 is not applicable to the facts of the present case in view of the judgment referred by Learned Representative for the workman tilted as **P.G.I. of M.E. and Research Versus Raj Kumar**, report in **2001(2) SCC 54**. Under the circumstances, the workman is held entitled to 50% back wages.

28. In the view of discussions made above, termination of the workman is held illegal being in violation to Section 25-F of the ID Act as such the workman is entitled to reinstatement with continuity of service and 50% back wages.

29. Accordingly, issue No.1 & 2 is decided in favour of the workman and against management No.1. Issue No.3 is decided against management No.2 and in favour of the workman.

#### **Relief :**

30. In the view of foregoing finding on the issues No.1 & 2 above, this industrial dispute is allowed qua management No.1. The workman is entitled to reinstatement with continuity of service and 50% back wages. Management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which management No.1 is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 14.12.2023.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 18th March, 2024

**No. 13/2/90-HII(2)-2024/4490.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **65/2021** dated **14.12.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SANDEEP SHARMA, S/O SH. RAJINDER SHARMA, HOUSE NO.2016, SECTOR 37-C, CHANDIGARH. (Workman)

AND

1. M/S CHECKMATE SERVICE PVT. LTD., SCF NO. 128, PHASE-3-B2, DISTRICT MOHALI THROUGH ITS MANAGING DIRECTOR.
2. AXIS BANK LTD., AXIS BANK CURRENCY CHEST, SECTOR 34, CHANDIGARH THROUGH ITS BRANCH MANAGER (Management)

**AWARD**

1. Sandeep Sharma, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 20.09.2017 the claimant-workman was appointed by management No.1 i.e. M/s Checkmate Services Pvt. Ltd., Mohali as Cash Sorter. The claimant-workman was deployed at the workplace of management No.2 i.e. Axis Bank Ltd., Axis Bank Currency Chest, Sector 34, Chandigarh. The claimant-workman remained there in the continuous employment up to 11.02.2021 when his services were illegally & wrongfully terminated by refusing of work. The claimant-workman was drawing ₹17,000/- per month as wages at the time of termination. On 12.02.2021 the claimant-workman went to attend his normal duty but he was refused work by management No.2 on the pretext that the management No.1 has asked them to refuse work to the worker. No reason of refusal of work was given to the claimant-workman by both the managements. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management No.1 has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement the claimant-workman served upon the management a demand notice dated 15.02.2021. After receiving the demand notice dated 15.02.2021, the management sent a letter dated 17.03.2021 to the claimant-workman, which was received by him on 21.03.2021 on the subject 'Final Intimation on not reporting on duty'. In the letter the management alleged that the claimant-workman is un-authorised absent from duty from 12.02.2021. The services of the workman were terminated and he was asked to contact HR for completion of full & final settlement. The claimant-workman vide his letter dated 22.03.2021 denied the alleged charge of absenteeism. The letter was duly received by the management. The claimant-workman further informed the management that he is ready to join his duty at Chandigarh with immediate effect. The management neither denied the contents of the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. Management No.1 appeared before the Conciliation Officer, U.T. Chandigarh one time only and thereafter he did not appear before the conciliation on any date fixed for settlement. The termination is illegal, wrongful, motivated against the principles of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the claimant-workman be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice, management No.1 contested the claim statement by filing written reply dated 12.11.2022 (filed on 06.12.2022) wherein it is stated that the date of commencement is correct but the answering

management did not terminate any employee. It is denied as incorrect that both these managements refused work to the claimant-workman. Since no termination was done, thus retrenchment benefits, charge sheet, inquiry to be held before termination etc. are not applicable. The employees collectively absented and refused to come to work, the matter was taken up with disciplinary action, Checkmate Security Services have made sufficient representation at Labour Department. The applicant's plea that action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice is not acceptable. The claimant-workman's plea of demanding reinstatement with back wages, continuity of service and without any change in service condition etc. is not acceptable. No such intentions and acts were initiated by employer but all outstanding efforts were made to get the employee to work as the company had to face huge losses.

4. Management No.2 contested the claim statement by filing separate written statement dated 01.11.2022 (filed on 01.11.2022) wherein preliminary objection is taken on the ground that the claim statement is not legally maintainable as there is privity of contract between claimant-workman and the answering management and the claimant-workman was never hired by the answering management.

5. On merits, it is denied for want of knowledge that on 20.09.2017 the claimant-workman was appointed as Cash Sorter by management No.1. The answering management had hired the services of management No.1 but appointment and termination of any worker was the sole discretion of management No.1 and the answering management has no role to play in it. The alleged the claimant-workman was not on the roll of bank nor employee of the bank nor even any salary was paid to him by the answering management. No refusal as alleged by the claimant-workman was conveyed by the officials of the answering management. No alleged demand notice was ever served upon the answering management and also no notice was received by the answering management from the office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The claimant-workman never remained employee or worker of the answering management. Rest of the averments of the claim statement are denied being incorrect and prayer is made that claim statement may be dismissed with cost.

6. The claimant-workman filed rejoinder to the written statement of management No.1 on 17.01.2023 wherein contents of the written statement except admitted facts are denied and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 was not filed.

7. From the pleadings of the parties, following issues were framed vide order dated 20.03.2023:-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits as prayed for ? OPW
3. Whether the claim statement qua management No.2 is not maintainable? OPM (management No.2)
4. Relief.

8. In evidence, claimant-workman Sandeep Sharma examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 08.09.2023 Learned Representative for the claimant-workman closed the evidence in affirmative.

9. On the other hand, management No.2 examined MW1 Amit Rajpal - Senior Manager, Axis Bank, Sector 34, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'.

10. Management No.1 examined MW2 Jaspal Singh - DGM (Banking) of M/s Checkmate Services Pvt. Ltd., Phase 3B-II, SAS Nagar Mohali, who tendered into evidence his affidavit vide Exhibit 'MW2/A' along with notary attested copies of documents Exhibit 'MW2/1' to Exhibit 'MW2/5' & Exhibit 'MW2/5A'.

**Exhibit 'MW2/1'** is authority letter dated 28.03.2019 in Jaspal Singh issued by the Managing Director & Company Secretary of management No.1.

**Exhibit 'MW2/2'** is aadhar card of Jaspal Singh.

**Exhibit MW2/3'** is warning letter dated 12.02.2021 issued to the workman by the authorised signatory of management No.1 through courier

**Exhibit 'MW2/3-A'** is original receipt of DTDC Courier Agencies.

**Exhibit 'MW2/4'** is absenteeism letter dated 18.02.2021 for not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/4-A'** is original postal receipt dated 20.02.2021.

**Exhibit 'MW2/5'** is letter dated 17.03.2021 for final intimation on not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/5-A'** is original postal receipt dated 19.03.2021.

11. On 16.11.2023 Learned Representative for management No.2 closed the evidence on behalf of management No.2. On 06.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed oral evidence. On 14.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed documentary evidence.

12. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

**Issue No.1 to 3 :**

13. Onus to prove issue No.1 & 2 is on the workman and onus to prove issue No.3 is on management No.2.

14. Under these issues, claimant-workman Sandeep Kumar examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity.

15. Management No.1 has examined MW2 Jaspal Singh - DGM (Banking), who vide his affidavit Exhibit 'MW2/A' deposed that he is working with management No.1 as Deputy General Manager (Banking) with Employee Code EMP/COR006558, Office at SCF 128, Phase 3B-II, SAS Nagar, Mohali from 06.05.2014 and he is personally aware of the facts of this case. Management No.1 is a company registered as per the provisions of the Company's Act, 1956. Management No.1 is engaged in business of providing security services, cash sorter services across the India to its customers on the basis of requirement and as per contract terms and agreement. Contrary to the workman's claim of illegal termination, he submits that the employment of the claimant-workman was not terminated. Due to exigency of work in the other location of management No.1, he as DGM (Banking) transferred the following four employees to their Ahmedabad office as per company's requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

These employees were transferred to their Ahmedabad office. They were given transfer letters given by hand to report to Checkmate, Ahmedabad Office under his instructions (as per company's requirement) on 11.02.2021 sent through Indian post RPAD. These letters were given in person which they refused to accept. They were briefed regarding the transfer, which they refused to accept, return letter with remarks of refusal. The transfer letters were displayed on the notice board of the Axis Bank on same day i.e. on 11.02.2021. On 12.02.2021, he was on leave and was attending function at his home town, when he received a call from Mr. Ritesh Kumar - Branch Manager, Axis Bank, stating that no employee of Checkmate Services had reported for duty and when they and he had tried to contact their employee, they were absent. The claimant-workman stated that they will not come to work and all were not willing to come for duty any more. He informed about



the mass absenteeism by the claimant-workman and repeated calls were received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employee who have not come on duty, the bank will not accept such un-authorised absence from their staff as bank work stuck up due to cash sorter not reporting for duty. He kept on calling absentee employees from his phone but his phone was not picked by any of the absent employees for the next 2 days i.e. 12.02.2021 to 14.02.2021. On resuming his office on 15.02.2021, he himself again tried to contact the absconding employees, only Mr. Ravi Kumar, EMP/CHD05592 and Mr. Pankaj Kataria, EMP/CHD/03936 picked the call and agreed to come to Mohali Office SCF 128, Phase 3B-II, SAS Nagar Mohali. On next day i.e. 16.02.2021 he himself tried to convince both the absconded employees to resume their duties as the bank officials were putting lot of pressure and the work stoppage had very negative impact on the bank services and their reputation and high penalty clause in the agreement. Both the employees Mr. Ravi Kumar and Mr. Pankaj Kataria were ready to understand and joined the duties but stated that other fellow employees had threatened them not to join the duty. Meanwhile they have appointed new staff in place of absconded employees to fill the bank requirement and their repetition as service provider as well to avoid high penalty of non-providing contractual staff as per agreement. They have also approached the absconded staff to join duty at the other place. They have requirement at Ahemdabad, for that they had sent the letter through RP/AD post letter dated 11.02.2021 as well sent the absenteeism letters on 22.02.2021 and final letter on 17.03.2021 to the claimant-workman to join duty as his services has not been terminated nor any violation of his appointment services conditions. He asserts that the management has never terminated the services of the claimant-workman. On the contrary the management has provided multiple opportunities to the claimant-workman to re-join duty even after a mass absconding incident incurred. The claimant-workman however failed to respond or re-join and instead engaged in mass absconding without any prior intimation. This action appears to be an attempt to harass both the managements to coercive tactics by the claimant-workman. The management remains willing to offer employment as there has been no formal termination of services. Consequently, there is no basis for claims related to back wages or any other form of compensation, given that the service has not been terminated. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/5' & Exhibit 'MW2/5A'.

16. The management No.2 examined MW1 Amit Raj Pal - Senior Manager, Axis Bank, who vide his affidavit Exhibit 'MW1/A' wherein he deposed that the present alleged claim filed by the claimant against management No.2 is legally maintainable as there is no privity of contract between claimant and management No.2 and the claimant was never hired by management No.2. Management No.2 had hired the services of management No.1 but the appointment and termination of any worker was the sole discretion of management No.1. Management No.2 had no role to play in it. The alleged claimant was not on the roll of the bank, nor employee of the bank nor even any salary was paid to him by management No.2. No notice as alleged was ever served upon management No.2 and also no notice was received by management No.2 from the office of Additional Labour Commissioner-cum-Conciliation officer, U.T. Chandigarh. The claimant never remained employee or worker of management No.2.

17. From the oral as well as documentary evidence led by the parties it comes out that undisputedly the claimant-workman was appointed on 20.09.2017 as Cash Sorter by management No.1 and was deployed at the work place of management No.2. In this regard, AW1 when to put to cross-examination by management No.2 stated that Axis Bank / management No.2 did not issue him any appointment letter and termination letter / order. He was deployed with the Axis Bank / management No.2 by M/s Checkmate i.e. management No.1. MW1 (witness of management No.2) when to put to cross-examination by the workman admitted as correct that the Axis Bank has contract with the Checkmate Services for providing the manpower. MW1 admitted as correct that the Checkmate Services provided about 15 workers including the claimant of the present case for deployment with Chandigarh Branch of Axis Bank. MW1 stated that bank was not maintaining the attendance of contractual workers. The supervisor of Checkmate was maintaining their attendance. The bank had not been supervising the disbursement of wages and provident fund etc. of the contractual workers. MW2 Jaspal Singh (witness of management No.1) when to put cross-examination by the workman stated that the agreement of management No.1 with the Axis Bank Ltd. / management No.2 was at central level and there was no local agreement. Under the said agreement, management No.1 provided 18 workers to management No.2 around year 2016. From the above-mentioned version of

AW1, MW1 and MW2 it is duly established on record that management No.1 i.e. M/s Checkmate Services Pvt. Ltd. is service provider, who under the contract has provided security services and Cash Sorter services to management No.2 i.e. Axis Bank, Sector 34, Chandigarh and the claimant-workman was deployed by the management No.1 at the work place of management No.2 as a Cash Sorter. Since management No.1 maintained the record of attendance and supervision of work of claimant-workman through its Supervisor, thus the claimant-workman was under the direct employment of management No.1 and was a contractual worker deployed with management No.2. There is no direct relationship of employer-employee between management No.2 and claimant-workman. Since management No.2 has hired the services of claimant-workman from its service provider i.e. management No.1, therefore, management No.2 was necessary party, being principal employer, and the claim qua management No.2 is duly maintainable.

18. Admittedly, the authority to appoint, transfer and terminate the contractual employee (herein claimant-workman) was with the service provider i.e. management No.1. Learned Representative for the claimant-workman argued that the claimant-workman remained in continuous employment of the management No.1 from the date of appointment i.e. 20.09.2017 up to 11.02.2021, thus completed 240 days of continuous service in 12 calendar months preceding termination of his services (service being verbally terminated on 12.02.2021). The claimant-workman has alleged that his last drawn wages were ₹ 17,000/- per month. On the other hand, Learned Representative for management No.1 argued that the workman has not completed continuous service of 240 days in 12 calendar months preceding absenteeism. To my opinion, the aforesaid argument advanced by Learned Representative for management No.1 is devoid of merits. No such plea is taken in the written reply to the claim statement. Moreover, MW2 in his cross-examination stated that all the workers including the workman had continuously worked for more than 240 days in 12 calendar months preceding their alleged absence of duty. In the claim statement, the workman has alleged that he was appointed by management No.1 on 20.09.2017 and remained in continuous employment of management No.1 up to 11.02.2021. MW2 in his cross-examination stated that there is no dispute with regard to the date of appointment, amount of monthly salary and the date of dispensing with of their services.

19. Management No.1 has taken the plea that 15 contractual workers were deployed with management No.2. On 11.02.2021, out of 15 contractual workers, 4 workers namely Ravinder, Joginder Pal, Suresh Kumar and Ajay Kumar were transferred to Ahmedabad. 4 workers who were transferred refused to accept the transfer letter and refused to join at Ahmedabad. The transfer-cum-movement order was also affixed on the notice board of management No.2 i.e. Axis Bank Limited. In order to put pressure upon the management No.1 to cancel the transfer order of four employees all 15 contractual workers collectively absented from duty w.e.f. 12.02.2021. After extensive follow-ups, 2 workers returned to duty with the same employment terms & conditions whereas the remaining 13 including the workman of the present case did not resume duty. It is further argued by Learned Representative for management No.1 that M/s Checkmate Service Pvt. Ltd. has not terminated the service of any of the workman in any manner. Management No.1 has followed due procedure issuing absenteeism letters and reminders, emphasising the company's intent for workman to resume duty but he refused to receive. Management No.1 also issued warning letter dated 12.02.2021 / Exhibit 'MW2/3' through courier vide receipt Exhibit 'MW2/3A', issued another absenteeism letter dated 18.02.2021 / Exhibit 'MW2/4' vide postal receipt Exhibit 'MW2/4A' and final intimation for not reporting on duty vide letter dated 17.03.2021 Exhibit 'MW2/5' through registered post vide Exhibit 'MW2/5A'. Despite issuance of various letters, the claimant-workman did not join back the duty, thus, the claimant-workman himself abandoned the job, though his services were never terminated by management No.1. The workman failed to report to his duty at the work place without any prior notice or explanation which is a clear violation of company's policy and established work expectations. The employer has the inherent right to manage its work force including making decisions regarding re-location. Management No.1 has acted in accordance with its established policies and procedures which were communicated to all the employees by all means to join duty.

20. On the other hand, Learned Representative for the workman contended that no letter / letters as alleged by management No.1 were ever received by the claimant-workman. There is nothing on record to show that the letters allegedly issued through courier or registered post were actually delivered to the claimant-workman. In the present case, there is no dispute with regard to the date of appointment, date of dispensing with the services and monthly salary of the workman. As proved from the cross-examination of MW2 Jaspal Singh (witness of management No.1), the workman had continuously worked for more than 240 days in 12

calendar months preceding his alleged absence from duty, the claimant-workman fulfills the requirement of continuous service as defined in Section 25-B of the ID Act. Once the workman is covered under Section 25-B of the ID Act, then the provision of Section 25-F stands attracted. For better appreciation Section 25-F of the ID Act is reproduced as below :-

*"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-*

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

21. Section 25-F of the ID Act lays down certain conditions which are precedent to retrenchment of workman. In the present case, the management No.1 has taken the plea that the claimant-workman absented from duty w.e.f. 12.02.2021 in protest to the transfer order of co-workers from Chandigarh to Ahemdabad. Moreover, the plea taken by the management No.1 during its evidence that the workman absented in protest to transfer order of the co-worker and to pressurize the management No.1 to withdraw the transfer order of the co-workers is beyond pleadings. The written statement finds no reference of any alleged transfer order of any of the workmen deployed with the Axis Bank. In this regard MW2 Jaspal Singh in his cross-examination stated that in written reply filed by management No.1 to the claim statement, it is nowhere mentioned that the worker was transferred from Chandigarh to some other place. Besides, the management has failed to prove into evidence the transfer order of the co-workers. The contention raised by Learned Representative for the claimant-workman that no letter allegedly issued by the management No.1 was served to the workman, carries force as MW2 (witness of management No.1) when put to cross-examination by workman stated in his statement recorded on 30.11.2023 that some of the letters were issued through courier and some through speed post to the workers. First warning letter was issued through courier to all absentee workers. No delivery report of courier was received from the concerned courier agency. In the claim statement address of the claimant-workman is mentioned as House No. 2016, Sector 37-C, Chandigarh whereas the letters Exhibits 'MW2/3', 'MW2/4' and 'MW2/5' are issued to the claimant workman on different address i.e. Calony Wali Gali, Ghogrian, (130), Distt. Jind Haryana. Management No.1 in cross-examination of claimant-workman / AW1 did not put his postal / correspondence address to him. Therefore, oral version of MW2 (his voluntary statement) in his cross-examination recorded on 06.12.2023 that the letters were issued to the workman as per his address available on record is insufficient to assume the delivery of letters. The management No.1 did not produce their office record into evidence showing the address of the claimant-workman.

22. MW2 Jaspal Singh in his cross-examination (recorded on 30.11.2023) denied the suggestion as wrong that vide letter dated 17.03.2021 / Exhibit 'MW2/5' the services of the workman were terminated. To my opinion, the denial on part of MW2 that the management did not intend to terminate the services of the workman by issuing letter dated 17.03.2021 / Exhibit 'MW2/5' is not acceptable because in his cross-examination MW2 admitted as correct that vide letter Exhibit 'MW2/5' the workman was directed to complete his clearance formalities for full & final settlement. The aforesaid admission on part of MW2 would suggest that the management No.1 intended to effect full & final settlement with the workman, which can be done only when the workman is relieved from service and not during continuity of his service.

23. MW2 in para 4 of his affidavit Exhibit 'MW2/A' deposed that due to exigency of work in other locations of respondent No.1 requirement, he as the DGM Banking, transferred the following employees to their Ahmedabad office as per company requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

24. In the present case, first of all the aforesaid plea taken by MW2 in his examination-in-chief by way of affidavit Exhibit 'MW2/A' is beyond pleadings. Secondly, MW2 in para 7 of his affidavit Exhibit 'MW2/A' deposed that he informed about the mass absenteeism by the applicant and repeated calls received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employees, who are not coming on duty, the bank will not accept such un-authorised absence from their staff, as Bank work was stuck up due to Cash Sorter not reporting for duty. The aforesaid version of MW2 is also beyond pleadings. Besides Axis Bank / management No.2 in its written statement / reply nowhere mentioned that Mr. Ritesh - Branch Manager, Axis Bank telephonically informed the management No.1 about any un-authorised absence of the workman from duty. Management No.1 and 2 did not examine Mr. Ritesh - Branch Manager in their evidence. Moreover, there is no documentary evidence on record to show the company's requirement at Ahmedabad office of management No.1.

25. If for the sake of arguments, it is assumed that the claimant-workman absented from duty w.e.f. 12.02.2021, then also at the most it amounts to misconduct and since the workman fulfills the requirement of Section 25-B of the ID Act, thus management No.1 was bound to comply with the conditions incorporated in Section 25-F of the ID Act. But management No.1 has failed to comply with mandatory conditions as laid down in Section 25-F of the ID Act. In this regard, MW2 when put to cross-examination by the workman stated that no charge sheet was served to the workman for his alleged absence from duty. Neither any preliminary inquiry nor any regular domestic inquiry was conducted against the workman. No retrenchment compensation was paid to the worker. From the aforesaid version of MW2, it is established that management No.1 has violated the provisions of Section 25-F of the ID Act. The judgment referred by Learned Representative for the workman reported in **2014(11) SCC 85** titled as **Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited** is applicable to the facts of the present case to an extent. The relevant portion of the judgment is reproduced as below :-

*"Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, 2010(3) S.C.T. 319 : 2010(5) SCC 497 as under:-*

*13.... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 Supreme Court 610, Bombay Union of Journalists v. State of Bombay, (1964) 6 SCR 22, State Bank of India v. N. Sundara Money, (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala, (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 255, L. Robert D'Souza v. Executive Engineer, Southern Railway, (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, (1980) 4 SCC 443, Gammon India Ltd. V. Niranjana Das, (1984) 1 SCC 509, Gurmail Singh v. State of Punjab, 1991(3) S.C.T. 608 : (1991) 1 SCC 189 and Pramod Jha v. State of Bihar, 2003(2) S.C.T. 296 : (2003) 4 SCC619. This Court has used different expressions for describing the*



*consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his services was not terminated."*

26. MW2 Jaspal Singh, witness of Management No.1 / service provider during his cross-examination expressed his readiness to re-join the worker but refused to give him the benefit of continuity of service and back wages. In this regard, MW2 when put to cross-examination by the workman stated that we are ready to take in service absentee workers as per availability of vacancy at Chandigarh and nearby stations such as Ludhiana, Jalandhar and Panchkula. MW2 further stated that they are not ready to re-join the workers with continuity of service. They are also not ready to pay back wages for the period of their absence from duty. MW2 denied the suggestion as wrong that re-joining of a workman without continuity of service amounts to fresh appointment. To my opinion, the conditional offer of management No.1 / service provider to re-join the workman as per availability of the vacancy and without the benefits of continuity of service & back wages is unjustified because as discussed above, in this case, the termination of services of the workman is held illegal being in violation to Section 25-F of the ID Act. In case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule. The workman is entitled to the relief of reinstatement with continuity of service under the same terms & conditions as existed before his termination.

27. As far as back wages are concerned, the claimant-workman has alleged that he remained unemployed during the period from the date of termination till date. On the other hand, none of the managements have taken plea of gainful employment in their respective written statements. However, it is argued by Learned Representative for management No.1 that as per the judgment of Hon'ble Supreme Court in *Civil Appeal No. 5390 of 2019 decided on 11th July 2019* tilted as *Chief Regional Manager, United India Insurance Company Limited United India Insurance Company Limited Versus Siraj Uddin Khan*; the principle of 'no work, no pay' applies. In case, the workman is to be reinstated he is not entitled to back wages. To my opinion, the judgment referred (supra) by Learned Representative for management No.1 is not applicable to the facts of the present case in view of the judgment referred by Learned Representative for the workman tilted as *P.G.I. of M.E. and Research Versus Raj Kumar*, report in *2001(2) SCC 54*. Under the circumstances, the workman is held entitled to 50% back wages.

28. In the view of discussions made above, termination of the workman is held illegal being in violation to Section 25-F of the ID Act as such the workman is entitled to reinstatement with continuity of service and 50% back wages.

29. Accordingly, issue No.1 & 2 is decided in favour of the workman and against management No.1. Issue No.3 is decided against management No. 2 and in favour of the workman.

#### **Relief :**

30. In the view of foregoing finding on the issues No.1 & 2 above, this industrial dispute is allowed qua management No.1. The workman is entitled to reinstatement with continuity of service and 50% back wages. Management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which management No.1 is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 14.12.2023.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT**Notification**

The 18th March, 2024

**No. 13/2/80-HII(2)-2024/4488.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **75/2021** dated **14.12.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JOGINDER PAL, S/O GIAN CHAND, VILLAGE LUNADHA, P.O. FATEHPUR, TEHSIL SARKAGHAT, DISTRICT MANDI. (Workman)

AND

1. M/S CHECKMATE SERVICE PVT. LTD., SCF NO. 128, PHASE-3-B2, DISTRICT MOHALI THROUGH DIRECTOR.
2. AXIS BANK LTD., AXIS BANK CURRENCY CHEST, SECTOR 34, CHANDIGARH THROUGH ITS BRANCH MANAGER (Management)

**AWARD**

1. Joginder Pal, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 11.06.2016 the claimant-workman was appointed by management No.1 i.e. M/s Checkmate Services Pvt. Ltd., Mohali as Cash Sorter. The claimant-workman was deployed at the workplace of management No.2 i.e. Axis Bank Ltd., Axis Bank Currency Chest, Sector 34, Chandigarh. The claimant-workman remained there in the continuous employment up to 11.02.2021 when his services were illegally & wrongfully terminated by refusing of work. The claimant-workman was drawing ₹ 17,000/- per month as wages at the time of termination. On 12.02.2021 the claimant-workman went to attend his normal duty but he was refused work by management No.2 on the pretext that the management No.1 has asked them to refuse work to the worker. No reason of refusal of work was given to the claimant-workman by both the managements. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management No.1 has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement the claimant-workman served upon the management a demand notice dated 15.02.2021. After receiving the demand notice dated 15.02.2021, the management sent a letter dated 22.02.2021 to the claimant-workman, which was received by him on 01.03.2021 on the subject 'Absenteeism Letter' for not report on duty. In the letter the management alleged that the claimant-workman is absent from duty from 12.02.2021 without obtaining any prior permission / sanctioned leave. He was asked to report for duty at Ahmedabad. The claimant-workman vide his letter dated 02.03.2021 denied the alleged charge of absenteeism. The letter was duly received by the management. The claimant-workman was asked the reason for reporting of duty at Ahmedabad whereas he is working at Chandigarh. The claimant-workman further informed the management that he is ready to join his duty at Chandigarh with immediate effect. But the management till date has not replied the letter. The management neither denied the contents of the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The management No.1 appeared before the Conciliation Officer, U.T. Chandigarh one time only and thereafter he did not appear before the conciliation on any date fixed for settlement. The termination is illegal, wrongful, motivated against the principles of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the claimant-workman be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice, management No.1 contested the claim statement by filing written reply dated 12.11.2022 (filed on 06.12.2022) wherein it is stated that the date of commencement is correct but the answering management did not terminate any employee. It is denied as incorrect that both these managements refused work to the claimant-workman. Since no termination was done, thus retrenchment benefits, charge sheet, inquiry to be held before termination etc. are not applicable. The employees collectively absented and refused to come to work, the matter was taken up with disciplinary action, Checkmate Security Services have made sufficient representation at Labour Department. The applicant's plea that action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice is not acceptable. The claimant-workman's plea of demanding reinstatement with back wages, continuity of service and without any change in service condition etc. is not acceptable. No such intentions and acts were initiated by employer but all outstanding efforts were made to get the employee to work as the company had to face huge losses.

4. Management No.2 contested the claim statement by filing separate written statement dated 01.11.2022 (filed on 01.11.2022) wherein preliminary objection is taken on the ground that the claim statement is not legally maintainable as there is privity of contract between claimant-workman and the answering management and the claimant-workman was never hired by the answering management.

5. On merits, it is denied for want of knowledge that on 11.06.2016 the claimant-workman was appointed as Cash Sorter by management No.1. The answering management had hired the services of management No.1 but appointment and termination of any worker was the sole discretion of management No.1 and the answering management has no role to play in it. The alleged the claimant-workman was not on the roll of bank nor employee of the bank nor even any salary was paid to him by the answering management. No refusal as alleged by the claimant-workman was conveyed by the officials of the answering management. No alleged demand notice was ever served upon the answering management and also no notice was received by the answering management from the office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The claimant-workman never remained employee or worker of the answering management. Rest of the averments of the claim statement are denied being incorrect and prayer is made that claim statement may be dismissed with cost.

6. The claimant-workman filed rejoinder to the written statement of management No.1 on 17.01.2023 wherein contents of the written statement except admitted facts are denied and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 was not filed.

7. From the pleadings of the parties, following issues were framed vide order dated 20.03.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits as prayed for ? OPW
3. Whether the claim statement qua management No.2 is not maintainable? OPM (management No.2)
4. Relief.

8. In evidence, claimant-workman Joginder Pal examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 08.09.2023 Learned Representative for the claimant-workman closed the evidence in affirmative.

9. On the other hand, management No.2 examined MW1 Amit Rajpal - Senior Manager, Axis Bank, Sector 34, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'.

10. Management No.1 examined MW2 Jaspal Singh - DGM (Banking) of M/s Checkmate Services Pvt. Ltd., Phase 3B-II, SAS Nagar Mohali, who tendered into evidence his affidavit vide Exhibit 'MW2/A' along with notary attested copies of documents

**Exhibit 'MW2/1'** is authority letter dated 28.03.2019 in Jaspal Singh issued by the Managing Director & Company Secretary of management No.1.

**Exhibit 'MW2/2'** is aadhar card of Jaspal Singh.

**Exhibit MW2/3'** is warning letter dated 12.02.2021 issued to the workman by the authorised signatory of management No.1 through courier.

**Exhibit 'MW2/3-A'** is original receipt of DTDC Courier Agencies.

**Exhibit 'MW2/4'** is absenteeism letter dated 22.02.2021 for not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/4-A'** is original postal receipt dated 24.02.2021.

**Exhibit 'MW2/5'** is letter dated 17.03.2021 for final intimation on not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/5-A'** is original postal receipt dated 19.03.2021.

**Exhibit 'MW2/6'** is original undelivered courier envelop bearing remarks 'R to N/S/A'.

11. In cross-examination of MW2 conducted by the workman, MW2 brought into evidence photocopy of movement order of the claimant-workman vide Mark 'I'.

12. On 16.11.2023 Learned Representative for management No.2 closed the evidence on behalf of management No.2. On 06.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed oral evidence. On 14.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed documentary evidence.

13. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

**Issue No.1 to 3 :**

14. Onus to prove issue No.1 & 2 is on the workman and onus to prove issue No.3 is on management No.2.

15. Under these issues, claimant-workman Joginder Pal examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity.

16. Management No.1 has examined MW2 Jaspal Singh - DGM (Banking), who vide his affidavit Exhibit 'MW2/A' deposed that he is working with management No.1 as Deputy General Manager (Banking) with Employee Code EMP/COR006558, Office at SCF 128, Phase 3B-II, SA S Nagar, Mohali from 06.05.2014 and he is personally aware of the facts of this case. Management No.1 is a company registered as per the provisions of the Company's Act, 1956. Management No.1 is engaged in business of providing security services, cash sorter services across the India to its customers on the basis of requirement and as per contract terms and agreement. Contrary to the workman's claim of illegal termination, he submits that the employment of the claimant-workman was not terminated rather transferred to another location in accordance with company's policies and operational requirements. The decision to transfer the claimant-workman was made after due consideration of company's business needs and without any malice or intent to cause harm to the claimant-workman. Due to exigency of work in the other location of management No.1, he as DGM (Banking) transferred the following four employees to their Ahmedabad office as per company's requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

These employees were transferred to their Ahmedabad office. They were given transfer letters given by hand to report to Checkmate, Ahmedabad Office under his instructions (as per company's requirement) on



11.02.2021 but they refused to accept. After that the transfer letter was sent by DTDC Courier on dated 12.02.2021 and they refused to accept again. These letters were given in person which they refused to accept. They were briefed regarding the transfer, which they refused to accept, return letter with remarks of refusal. The transfer letters were displayed on the notice board of the Axis Bank on same day i.e. on 11.02.2021. On 12.02.2021, he was on leave and was attending function at his home town, when he received a call from Mr. Ritesh Kumar - Branch Manager, Axis Bank, stating that no employee of Checkmate Services had reported for duty and when they and he had tried to contact their employee, they were absent. The claimant-workman stated that they will not come to work and all were not willing to come for duty any more. He informed about the mass absenteeism by the claimant-workman and repeated calls were received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employee who have not come on duty, the bank will not accept such un-authorised absence from their staff as bank work stuck up due to cash sorter not reporting for duty. He kept on calling absentee employees from his phone but his phone was not picked by any of the absent employees for the next 2 days i.e. 12.02.2021 to 14.02.2021. On resuming his office on 15.02.2021, he himself again tried to contact the absconding employees, only Mr. Ravi Kumar, EMP/CHD05592 and Mr. Pankaj Kataria, EMP/CHD/03936 picked the call and agreed to come to Mohali Office SCF 128, Phase 3B-II, SAS Nagar Mohali. On next day i.e. 16.02.2021 he himself tried to convince both the absconded employees to resume their duties as the bank officials were putting lot of pressure and the work stoppage had very negative impact on the bank services and their reputation and high penalty clause in the agreement. Both the employees Mr. Ravi Kumar and Mr. Pankaj Kataria were ready to understand and joined the duties but stated that other fellow employees had threatened them not to join the duty. Meanwhile they have appointed new staff in place of absconded employees to fill the bank requirement and their repetition as service provider as well to avoid high penalty of non-providing contractual staff as per agreement. They have also approached the absconded staff to join duty at the other place. They have requirement at Ahemdabad, for that they had sent the letter through RP/AD post letter dated 11.02.2021 as well sent the absenteeism letters on 22.02.2021 and final letter on 17.03.2021 to the claimant-workman to join duty as his services has not been terminated nor any violation of his appointment services conditions. In the case of Namrata Verma Versus the State of Uttar Pradesh and Others, Hon'ble Supreme Court of India in case number Special Leave to Appeal (C) No(s).36717/2017 it was established that employer has the right to transfer employee as per the business requirement of the employer. He asserts that the management has never terminated the services of the claimant-workman. On the contrary the management has provided multiple opportunities to the claimant-workman to re-join duty even after a mass absconding incident incurred. The claimant-workman however failed to respond or re-join and instead engaged in mass absconding without any prior intimation. This action appears to be an attempt to harass both the managements to coercive tactics by the claimant-workman. The management remains willing to offer employment as there has been no formal termination of services. Consequently, there is no basis for claims related to back wages or any other form of compensation, given that the service has not been terminated. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/6' and Mark 'M1'.

17. The management No.2 examined MW1 Amit Raj Pal - Senior Manager, Axis Bank, who vide his affidavit Exhibit 'MW1/A' wherein he deposed that the present alleged claim filed by the claimant against management No.2 is legally maintainable as there is no privity of contract between claimant and management No.2 and the claimant was never hired by management No.2. Management No.2 had hired the services of management No.1 but the appointment and termination of any worker was the sole discretion of management No.1. Management No.2 had no role to play in it. The alleged claimant was not on the roll of the bank, nor employee of the bank nor even any salary was paid to him by management No.2. No notice as alleged was ever served upon management No.2 and also no notice was received by management No.2 from the office of Additional Labour Commissioner-cum-Conciliation officer, U.T. Chandigarh. The claimant never remained employee or worker of management No.2.

18. From the oral as well as documentary evidence led by the parties it comes out that undisputedly the claimant-workman was appointed on 11.06.2016 as Cash Sorter by management No.1 and was deployed at the work place of management No.2. In this regard, AW1 when to put to cross-examination by management No.2 stated that Axis Bank / management No.2 did not issue him any appointment letter and termination

letter / order. He was deployed with the Axis Bank / management No.2 by M/s Checkmate i.e. management No.1. MW1 (witness of management No.2) when put to cross-examination by the workman admitted as correct that the Axis Bank has contract with the Checkmate Services for providing the manpower. MW1 admitted as correct that the Checkmate Services provided about 15 workers including the claimant of the present case for deployment with Chandigarh Branch of Axis Bank. MW1 stated that bank was not maintaining the attendance of contractual workers. The Supervisor of Checkmate was maintaining their attendance. The bank had not been supervising the disbursement of wages and provident fund etc. of the contractual workers. MW2 Jaspal Singh (witness of management No.1) when put to cross-examination by the workman stated that the agreement of management No.1 with the Axis Bank Ltd. / management No.2 was at central level and there was no local agreement. Under the said agreement, management No.1 provided 18 workers to management No.2 around year 2016. From the above-mentioned version of AW1, MW1 and MW2 it is duly established on record that management No.1 i.e. M/s Checkmate Services Pvt. Ltd. is service provider, who under the contract has provided security services and Cash Sorter services to management No.2 i.e. Axis Bank, Sector 34, Chandigarh and the claimant-workman was deployed by the management No.1 at the work place of management No.2 as a Cash Sorter. Since management No.1 maintained the record of attendance and supervision of work of claimant-workman through its Supervisor, thus the claimant-workman was under the direct employment of management No.1 and was a contractual worker deployed with management No.2. There is no direct relationship of employer-employee between management No.2 and claimant-workman. Since management No.2 has hired the services of claimant-workman from its service provider i.e. management No.1, therefore, management No.2 was necessary party, being principal employer, and the claim qua management No.2 is duly maintainable.

19. Admittedly, the authority to appoint, transfer and terminate the contractual employee (herein claimant-workman) was with the service provider i.e. management No.1. Learned Representative for the claimant-workman argued that the claimant-workman remained in continuous employment of the management No.1 from the date of appointment i.e. 11.06.2016 up to 11.02.2021, thus completed 240 days of continuous service in 12 calendar months preceding termination of his services (service being verbally terminated on 12.02.2021). The claimant-workman has alleged that his last drawn wages were ₹ 17,000/- per month. In this regard MW2 (witness of management No.1) was put to cross-examination by workman stated that there is no dispute with regard to the date of appointment, amount of monthly salary and the date of dispensing with of their services. MW2 further stated that all the workers including the workman had continuously worked for more than 240 days in 12 calendar months preceding their absence from duty.

20. Management No.1 has taken the plea that 15 contractual workers were deployed with management No.2. On 11.02.2021, out of 15 contractual workers, 4 workers namely Ravinder, Joginder Pal (Joginder Pal, workman in the present case), Suresh Kumar and Ajay Kumar were transferred to Ahmedabad. 4 workers, who were transferred, refused to accept the transfer letter and refused to join at Ahmedabad. The transfer-cum-movement order was also affixed on the notice board of management No.2 i.e. Axis Bank Limited. In order to put pressure upon the management No.1 to cancel the transfer order of four employees all 15 contractual workers collectively absented from duty w.e.f. 12.02.2021. After extensive follow-ups, 2 workers returned to duty with the same employment terms & conditions whereas the remaining 13 including the workman of the present case did not resume duty. The workman Joginder Pal failed to report on duty at Ahmedabad as directed vide movement order Mark 'M1'. It is further argued by Learned Representative for management No.1 that M/s Checkmate Service Pvt. Ltd. has not terminated the service of any of the workman in any manner. Management No.1 has followed due procedure issuing absenteeism letters and reminders, emphasising the company's intent for workman to resume duty. Management No.2 made various efforts to personally serve the movement-cum-transfer order to the claimant-workman but he refused to receive. Management No.1 also issued warning letter dated 12.02.2021 / Exhibit 'MW2/3' through courier vide receipt Exhibit 'MW2/3A', issued another absenteeism letter dated 22.02.2021 / Exhibit 'MW2/4' vide postal receipt Exhibit 'MW2/4A' and final intimation for not reporting on duty vide letter dated 17.03.2021 Exhibit 'MW2/5'

through registered post vide Exhibit 'MW2/5A'. Despite issuance of various letters, the claimant-workman did not join back the duty, thus, the claimant-workman himself abandoned the job, though his services were never terminated by management No.1. The workman failed to report to his duty at the work place without any prior notice or explanation which is a clear violation of company's policy and established work expectations. The employer has the inherent right to manage its work force including making decisions regarding re-location. Management No.1 has acted in accordance with its established policies and procedures which were communicated to all the employees by all means to join duty.

21. On the other hand, Learned Representative for the workman contended that neither the original movement order / transfer order nor carbon copy of the same is brought into evidence by management No.1 despite availing opportunity to produce the same. Furthermore, the alleged transfer order / movement order is violation of Section 9-A of the ID Act and in contravention to The Fourth Schedule to Section 9-A of the ID Act.

22. As proved from cross-examination of MW2 Jaspal Singh (witness of management No.1), the workman had continuously worked for more than 240 days in 12 calendar months preceding his alleged absence from duty, the claimant-workman fulfills the requirement of continuous service as defined in Section 25-B of the ID Act. Once the workman is covered under Section 25-B of the ID Act, then the provision of Section 25-F of the ID Act stands attracted. For better appreciation Section 25-F of the ID Act is reproduced as below :-

***"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

23. Section 25-F of the ID Act lays down certain conditions which are precedent to retrenchment of workman. In the present case, the management No.1 has taken the plea that the claimant-workman absented from duty w.e.f. 12.02.2021. As per plea of management No.1, the claimant-workman was transferred to Ahmedabad by issuing movement order but the claimant-workman failed to report on duty at Ahmedabad as per the directions given in the movement order. MW2 Jaspal Singh in his cross-examination (recorded on 30.11.2023) denied the suggestion as wrong that vide letter dated 17.03.2021 / Exhibit 'MW2/5' the services of the workman were terminated. To my opinion, the denial on part of MW2 that the management did not intend to terminate the services of the workman by issuing letter dated 17.03.2021 / Exhibit 'MW2/5' is not acceptable because in his further cross-examination MW2 admitted as correct that vide letter Exhibit 'MW2/5' the workman was directed to complete his clearance formalities for full & final settlement. The aforesaid admission on part of MW2 would suggest that the management No.1 intended to effect full & final settlement with the workman, which can be done only when the workman is relieved from service and not during continuity of his service.

24. As far as movement / transfer order is concerned, MW2 in his cross-examination (conducted by the workman) recorded on dated 30.11.2023 stated that the workers Ravinder, Joginder Pal, Suresh Kumar S/o Milap Chand and Ajay were transferred from Chandigarh to Ahmadabad. He is in possession of carbon copies of movement orders issued to aforesaid workers directing them to report at the transferee station.

Today, he has not brought the copies of the movement orders. MW2 further stated that except the movement orders, there is no other separate transfer orders of workers. Remaining cross-examination of MW2 on 30.11.2023 was deferred for producing the alleged movement order by the witness. MW2 when recalled for his remaining cross-examination on 06.12.2023, stated that original and the carbon copies of the movement order / orders are not traceable. He has brought photocopy of movement order relating to workman Joginder Pal and the same is Mark 'M-1'. In this manner management No.1 despite availing opportunity failed to sufficiently prove into evidence the alleged movement / transfer order of the claimant-workman. The document Mark 'M-1' is a photocopy, its original or carbon copy is produced into evidence, therefore, no authenticity is attached to Mark 'M-1'. Above all management No.1 in its written statement nowhere pleaded that the claimant-workman was ever issued any movement order / transfer order and that the claimant-workman did not report on duty at Ahmedabad. It is not the case of management No.1 that they have ever received any intimation from Branch Office of management No.1 at Ahmedabad that the claimant-workman did not report on duty as per the movement order. In this regard, MW2 in his cross-examination dated 30.11.2023 stated that no intimation was received from their branch office at Ahmedabad that the workman did not turn up to join duty. MW2 Jaspal Singh in his cross-examination stated that in the written reply filed by management No.1, it is nowhere mentioned that the worker was transferred from Chandigarh to some other place. MW2 in his cross-examination admitted as correct that there is no reference of Ahmedabad in letter Exhibit 'MW2/3' to Exhibit 'MW2/5'.

25. The management's plea that the workman was transferred as per company's policy is devoid of merits because there is no evidence of management No.1 to prove the fact that the service of the workman was transferrable. The nature of job being transferable or non-transferable can be ascertained either from the appointment letter or certified standing orders of the company (herein management No.1). In the present case, neither there is any appointment letter of the workman issued by management No.1 nor there is any certified standing orders of management No.1. It is not case of the management No.1 that there was any settlement between the workman and management No.1 relating to transfer policy. MW2 in his cross-examination stated that the employees deputed in the territory U.T. Chandigarh are issued appointment letters and transfer orders from Chandigarh office of M/s Checkmate Services Pvt. Ltd. / management No.1. As discussed above, in the present case neither any appointment letter nor any transfer order is proved into evidence. In the absence of appointment letter, Certified Standing Orders and any settlement between the parties, The Fourth Schedule and Section 9-A of the ID Act would be attracted if the transfer of the workman results in change of service conditions.

26. Undisputedly, the workman was drawing ₹17,000/- as wages per month at the time of termination. MW2 in his cross-examination stated that the workman was verbally told that wages to him at Ahmedabad will be paid as per the minimum wages of that state. Management No.1 did not prove into evidence the Minimum Wage List of Ahmedabad (Gujarat). However, during course of arguments Learned Representative for the management No.1 failed to controvert the contention of Learned Representative for the workman that minimum wages at Ahmedabad are much lesser than the monthly wages drawn by the workman at Chandigarh. As per Section 9-A of ID Act, no employer who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change -

(a) .....

(b) .....

27. The Fourth Schedule of the ID Act incorporates conditions of service for change of which notice is to be given. The relevant conditions mentioned at serial No.9 and 11 of The Fourth Schedule of ID Act are reproduced as below :-

*"9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders.*

*11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control)*

28. MW2 in para 5 of his affidavit Exhibit 'MW2/A' deposed that due to exigency of work in other locations of respondent No.1 requirement, he as the DGM Banking, transferred the following employees to their Ahmedabad office as per company requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

29. In the present case, first of all the aforesaid plea taken by MW2 in his examination-in-chief by way of affidavit Exhibit 'MW2/A' is beyond pleadings. Secondly, MW2 in para 8 of his affidavit Exhibit 'MW2/A' deposed that he informed about the mass absenteeism by the applicant and repeated calls received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employees, who are not coming on duty, the bank will not accept such un-authorised absence from their staff, as Bank work was stuck up due to Cash Sorter not reporting for duty. The aforesaid version of MW2 is also beyond pleadings. Besides Axis Bank / management No.2 in its written statement / reply nowhere mentioned that Mr. Ritesh - Branch Manager, Axis Bank telephonically informed the management No.1 about any un-authorised absence of the workman from duty. Management No.1 and 2 did not examine Mr. Ritesh - Branch Manager in their evidence. Moreover, there is no documentary evidence on record to show the company's requirement at Ahmedabad office of management No.1. Under these circumstances, the transfer of the workman from Chandigarh to Ahmedabad on lesser monthly wages amounts to change in his service conditions. Section 9-A and The Fourth Schedule of the ID Act prohibits imposing any change in service condition without notice. Section 9-A of the ID Act requires employer proposing to adversely change certain service conditions of covered workman to provide notice of 21 days of the proposed change to the impacted workman. In the present case, it is own plea of management No.1 that transfer order was of 11.02.2021 directing the workman to join at other location at Ahmedabad on 12.02.2021. Before issuing the alleged transfer order / movement order management No.1 failed to provide notice of 21 days to the concerned workman, which is violation of The Fourth Schedule and Section 9-A of the ID Act.

30. If for the sake of arguments, it is assumed that the claimant-workman absented from duty w.e.f. 12.02.2021, then also at the most it amounts to misconduct and since the workman fulfills the requirement of Section 25-B of the ID Act, thus management No.1 was bound to comply with the conditions incorporated in Section 25-F of the ID Act. But management No.1 has failed to comply with mandatory conditions as laid down in Section 25-F of the ID Act. In this regard, MW2 when put to cross-examination by the workman stated that no charge sheet was served to the workman for his alleged absence from duty. Neither any preliminary inquiry nor any regular domestic inquiry was conducted against the workman. No retrenchment compensation was paid to the worker. From the aforesaid version of MW2, it is established that management No.1 has violated the provisions of Section 25-F of the ID Act. The judgment referred by Learned Representative



for the workman reported in **2014(11) SCC 85** titled as **Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited** is applicable to the facts of the present case to an extent. The relevant portion of the judgment is reproduced as below :-

*"Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, 2010(3) S.C.T. 319 : 2010(5) SCC 497** as under:-*

*13.... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - **State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 Supreme Court 610, Bombay Union of Journalists v. State of Bombay, (1964) 6 SCR 22, State Bank of India v. N. Sundara Money, (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala, (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 255, L. Robert D'Souza v. Executive Engineer, Southern Railway, (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, (1980) 4 SCC 443, Gammon India Ltd. V. Niranjana Das, (1984) 1 SCC 509, Gurmail Singh v. State of Punjab, 1991(3) S.C.T. 608 : (1991) 1 SCC 189 and Pramod Jha v. State of Bihar, 2003(2) S.C.T. 296 : (2003) 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his services was not terminated."***

31. MW2 Jaspal Singh, witness of Management No.1 / service provider during his cross-examination expressed his readiness to re-join the worker but refused to give him the benefit of continuity of service and back wages. In this regard, MW2 when put to cross-examination by the workman stated that we are ready to take in service absentee workers as per availability of vacancy at Chandigarh and nearby stations such as Ludhiana, Jalandhar and Panchkula. MW2 further stated that they are not ready to re-join the workers with continuity of service. They are also not ready to pay back wages for the period of their absence from duty. MW2 denied the suggestion as wrong that re-joining of a workman without continuity of service amounts to fresh appointment. To my opinion, the conditional offer of management No.1 / service provider to re-join the workman as per availability of the vacancy and without the benefits of continuity of service & back wages is unjustified because as discussed above, in this case, the termination of services of the workman is held illegal being in violation to Section 25-F of the ID Act. In case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule. The workman is entitled to the relief of reinstatement with continuity of service under the same terms & conditions as existed before his termination.

32. As far as back wages are concerned, the claimant-workman has alleged that he remained unemployed during the period from the date of termination till date. On the other hand, none of the managements have taken plea of gainful employment in their respective written statements. However, it is argued by Learned Representative for management No.1 that as per the judgment of Hon'ble Supreme Court in *Civil Appeal No. 5390 of 2019 decided on 11th July 2019* tilted as *Chief Regional Manager, United India Insurance Company Limited United India Insurance Company Limited Versus Siraj Uddin Khan*; the principle of 'no work, no pay' applies. In case, the workman is to be reinstated he is not entitled to back wages. To my opinion, the judgment referred (supra) by Learned Representative for management No.1 is not applicable to the facts of the present case in view of the judgment referred by Learned Representative for the workman tilted as *P.G.I. of M.E. and Research Versus Raj Kumar*, report in *2001(2) SCC 54*. Under the circumstances, the workman is held entitled to 50% back wages.

33. In the view of discussions made above, termination of the workman is held illegal being in violation to Section 25-F of the ID Act as such the workman is entitled to reinstatement with continuity of service and 50% back wages.

34. Accordingly, issue No.1 & 2 is decided in favour of the workman and against management No.1. Issue No.3 is decided against management No.2 and in favour of the workman.

**Relief :**

35. In the view of foregoing finding on the issues No.1 & 2 above, this industrial dispute is allowed qua management No.1. The workman is entitled to reinstatement with continuity of service and 50% back wages. Management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which management No.1 is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Dated : 14.12.2023.

(Sd.) . . . ,  
(JAGDEEP KAUR VIRK)  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No. PB0152.

Secretary Labour,  
Chandigarh Administration.

**CHANGE OF NAME**

मैं, सुनीता, पत्नी चमन लाल, निवासी मकान नंबर # 2471, माडीवाला टाउन मनीमाजरा, चंडीगढ़, ने अपना नाम सुनीता से बदलकर रफ़ीकन रख लिया है।

[416-1]

I, Sukhwinder Kaur, W/o Kartar Singh, R/o H. No. 159, Badheri, UT Chandigarh, have changed my name from Sukhwinder Kaur to Shikha.

[417-1]

I, Arti Sangwan, D/o Jagwant Singh, R/o # 601, Sector 36-B, Chandigarh, have changed my name to Arti Rani.

[418-1]

I, Anjuli, W/o Mr. Rogers Hans, R/o House No. 524, Pancham Enclave, Sector 48-A, Chandigarh, have changed my name from Anjuli to Anjuli Hans, after Marriage.

[419-1]

I, Payal, D/o Sh. Balbir Singh Saini, R/o H. No. 447, Sector 46-A, Chandigarh, have changed my name from Payal to Payal Saini.

[420-1]

मैं, Dan Bahadur B K, पुत्र Nand Lal B K, निवासी # 2350/1, Mariwala Town, सैक्टर 13, Manimajra, चंडीगढ़, ने अपना नाम बदलकर Dan Bahadur Bishwokarma रख लिया है।

[421-1]

मैं, Dipendra BC, पुत्र Jog Bahadur BC, निवासी # 2350/1, Mariwala Town, सैक्टर 13, Manimajra, चंडीगढ़, ने अपना नाम बदलकर Dipendra Budhathoki रख लिया है।

[422-1]

I, Jung Bhadur, S/o Hans Raj, R/o # 2961/2, Sector 49-D, Chandigarh, have changed my name to Jang Bahadur.

[423-1]

I, KM Mohini, D/o Megh Raj Singh, # 3086, Sector 20-D, Chandigarh, have changed my name KM Mohini to Mohini Singh.

[424-1]

*"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."*